

UPDATED RESPONSE OF BOLIVIA

I. BRIEF DESCRIPTION OF THE LEGAL-INSTITUTIONAL SYSTEM OF THE REPUBLIC OF BOLIVIA

Bolivia is constituted as a unitary Republic, independent, free, sovereign, multiethnic, and pluricultural. It has adopted a representative democracy as its formal government.

The Political Constitution of the State, amended on February 20, 2003, provides that the people shall deliberate and govern through their representatives, by means of the Constituent Assembly, the Citizens' Legislative Initiative and Referendum, as established in the constitution and regulated by law.

The main bodies of the State are the legislative, executive and judicial branches.

The legislative branch consists of the National Congress, which is composed of the Chamber of Deputies (130 members) and the Senate (27 members). Its principal task is to issue, abrogate, repeal, amend and interpret laws. It also exerts oversight over the executive branch, municipal governments, and other autonomous State bodies.

The executive branch is headed by the President of the Republic, together with the ministers of State. The President and Vice President of the Republic are elected by popular vote for a term of five years. The President of the Republic may be reelected only once, after at least one constitutional term has elapsed.

The judicial branch consists of the Supreme Court Justice, the Constitutional Tribunal, the district Superior Courts (for each department into which the country is geographically divided) and by the lower courts and judges. The establishment of special tribunals or courts is not allowed.

The Supreme Court is the highest tribunal of ordinary and administrative justice. It consists of 12 Justices who are elected by Congress for a term of 10 years. Control over constitutionality is the responsibility of the Constitutional Tribunal, which consists of five magistrates appointed by the National Congress. There is also a Judicial Council, which is the administrative and disciplinary body of the Judiciary.

Bolivia also has constitutionally autonomous bodies known as municipal governments, consisting of a mayor and the municipal council, who are elected by popular vote. The constitutional autonomy of the municipality gives it normative, executive, administrative and technical powers within areas of municipal competence and jurisdiction. Because of their attributes and powers, under the constitution and the law, municipalities represent a direct link with the community.

Bolivia is divided geographically into nine departments, in which the executive branch is represented by the departmental prefects, under a decentralized administrative system. The departmental prefectures also include a departmental council, members of which are appointed by the municipal councils of each province.

Under the constitution, there are various public entities that play an important and vital role in the country's development. Among these are the following:

- The Office of the Comptroller General, which is responsible for fiscal oversight of the activities of autonomous entities and mixed-economy corporations. The Comptroller

General reports directly to the President of the Republic, and is appointed by the President from a list submitted by the Senate, for a term of 10 years.

- The National Elections Court is the principal body of the election system, and its composition, jurisdiction and powers are established by special laws.
- The Attorney General's Office (*Ministerio Público*) is responsible for taking action to defend legality and the interests of the State and society. It conducts its tasks through commissions appointed by the legislative chambers, through the Attorney General, who is elected by a two-thirds vote of Congress, and through other officials designated by special law.

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.

II. CONTENT 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? If so, briefly describe them and list and attach a copy of the related provisions and documents.*

In Bolivia, standards for the performance of public functions are contained in various legal provisions of differing hierarchy, and which are either general or particular in scope. This section describes the principal embodiment of those rules, by order of hierarchy, and explains their scope and essential characteristics.

The Political Constitution of the State, as the supreme law of the land that lays down principles, guarantees, rights and duties, establishes, in Articles 43 and 44¹, a constitutional mandate requiring adoption of a special statute for the civil service. Those Articles define the broad objective of that statute, which is to establish the rights and duties of public servants (understood as meaning employees providing services to any of the three branches of the State), and the rules governing the administrative career, with respect to the dignity and efficiency of public service,

¹ Article 43. A special law shall establish the Civil Service Statute on the basis of the fundamental principle that public servants and public employees must serve exclusively the public interest, and not private interests or those of a political party.

Article 44. The Civil Service Statute will establish the rights and duties of public servants and employees and will contain provisions guaranteeing the administrative career, as well as the dignity and efficacy of the public service.

on the basis of the fundamental principle that public servants must serve exclusively the public interest, and not private interests or those of any political party.

The Constitution establishes rules for the conduct of legislators (Senators and Deputies). Articles 49 and 50² contain provisions governing performance of their public duties and establishes a series of limitations, incompatibilities and restrictions in order to prevent abuse.

With respect to the conduct of magistrates and judges of the judicial branch, the Constitution, in Article 116³, establishes the independence of justice administration, subject to the law, as well as incompatibilities affecting judges. Special attention should be drawn to the specific regulations governing incompatibilities, prohibitions, requirements and impediments for judicial officials contained in Law 1455 of February 13, 1993 (LOJ, Law on Organization of the Judiciary), particularly Articles 6, 7, 8, 9, 10, 11 and 13⁴, as well as Order 43/99 of the Judiciary, approving

² Article 49. Senators and Deputies may be elected President or Vice President of the Republic, or appointed Ministers of State or diplomatic agents, and shall be suspended from their legislative functions while performing those tasks. They may not assume other positions in the executive or judicial branches. Article 50. The following persons are prohibited from election as national representatives:
1. Civil servants and public employees, military and police officers on active duty, and ecclesiastic personnel, unless they resign and cease their functions and employment at least 60 days before the election. This provision does not apply to university rectors and professors.

2. Contractors for public works and services; administrators, managers and directors, agents and representatives of corporations or establishments in which the State has a financial interest, or companies subsidized by the State; administrators and collectors of public funds, until they liquidate their contracts and accounts.

³ Political Constitution of the State, Article 116. I. The judicial branch consists of the Supreme Court of Justice, the Constitutional Tribunal, the District Superior Court, the lower courts and judges, and other tribunals and judges established by law. The law determines the organization and powers of the tribunals and judges of the Republic. The Judicial Council is part of the judicial branch....

VI. Magistrates and judges are independent in their administration of justice and are subject only to the Constitution and the law. They may not be removed from office except by court order....

IX. Exercise of the judicial function is incompatible with any other remunerated public or private activity, with the exception of university teaching.

⁴ LOJ: Article 6. Incompatibility of the judicial function with other public duties. The functions of magistrates, judges and judicial personnel are incompatible with the exercise of any other remunerated public office, including military and police duty, even on temporary commission, except for university teaching functions, and codifying commissions. They are also incompatible with management functions in private institutions or businesses. Acceptance of any of these functions implies a tacit resignation from the Judiciary and cancels any judicial acts as of the date of that acceptance. Nor may such persons exercise any political or labor union activity, under the same penalty.

Article 7. Incompatibility with the exercise of advocacy. Judicial functions are also incompatible with the exercise of advocacy, except in cases dealing with the official himself or his immediate family.

Article 8. Incompatibility with arbitration functions. Judicial officials may not exercise the functions of arbitration or friendly settlement.

Article 9. Prohibition on grounds of relationship between magistrates or judges. Magistrates and judges who are related to the fourth degree of consanguinity or the second degree of affinity, or by adoption, marriage or baptism, may not exercise functions within the same tribunal, or within tribunals or courts at the same or next level within the same judicial District. This incompatibility also applies to judicial personnel.

Article 10. Prohibition on self-pleading. Magistrates and judges may not exercise judicial functions on their own behalf, or that of relatives to the fourth degree of consanguinity or the second degree of affinity, or in cases in which they have a direct interest because they have served as attorney, counsel, manager or agent for the litigant.

"Regulations Governing Incompatibilities and Abuse of Influence" and "the Principles of Bangalore on the Conduct of the Judiciary", an instrument that was recently adopted by the Supreme Court for the country's judges.⁵

The constitutional provisions of Articles 43 and 44 are reflected in Law 2027 of October 27, 1999 (Civil Service Statute), which governs the relationship between the State and its public servants, establishing their rights and duties in exercise of their public functions. In particular, Article 8 (Duties), 9 (Prohibitions)⁶, 11 (Incompatibilities), 12 (Ethical Principles), 13 (Promotion of Codes of Ethics), and 14 (Gifts)⁷ establish clear rules of conduct that must be observed by public servants.

Article 11. Prohibition on agency relationships. No magistrate or judge or Justice official may serve as an agent before any public body, nor as the judicial depository or administrator of any property.

Article 13. Impediments to the judicial function. Persons declared prohibited, mentally defective, deaf, mute, blind, and minors, as well as chronic alcoholics and drug addicts may not serve as magistrates, judges or judicial personnel. If any of these grounds should occur and be proven after the official is appointed or installed, a new appointment must be made.

⁵ A copy of this instrument is attached as an annex.

⁶ Article 8. Duties. Public servants have the following duties:

- a) To respect and comply with the political Constitution of the State, the laws and other legal provisions.
- b) To perform other duties, powers and functions punctually, promptly, economically, efficiently, honorably and in full compliance with the Constitution, the laws, and other legal provisions.
- c) To obey the orders of their superiors, in accordance with law.
- d) To perform the full workday.
- e) To respond diligently and efficiently to requests from the public.
- f) To protect matters and information previously established as confidential that come to their knowledge by reason of their duties.
- g) To see to the economical and efficient use of the goods and materials allocated for their functions.
- h) To conserve and maintain documentation and archives within their custody, and to provide timely and reliable information on matters pertaining to their functions.
- i) To fulfill regulatory provisions relating to workplace safety and hygiene.
- j) To present sworn statements of their assets and income, as required in this statute and in regulatory provisions.
- k) To declare any relationship by blood or marriage with any elected or appointed official providing services to the administration.
- l) To excuse themselves from participating in committees for the selection of career officials when there is a family relationship as established in the Family Code.

Article 9. Prohibitions. Public servants are subject to the following prohibitions:

- a) Exercising powers or functions beyond their competence.
- b) Engaging in partisan political activities or pursuing private interests during the workday or in exercise of their functions.
- c) Using public properties, furnishings or resources for political or private ends or for any other purpose incompatible with their official function.
- d) Taking or inciting any action that will affect or damage government property, furnishings or materials.
- e) Promoting or participating, directly or indirectly, in activities intended to secure illicit advantage.
- f) Participating in proceedings or affairs in which they have a direct interest.
- g) Securing favors or benefits from proceedings or affairs, for themselves or for third parties.
- h) Disclosing or using information previously established as confidential and reserved for official purposes.

⁷ Article 11. Incompatibilities I. Public servants are subject to the following incompatibilities:

- a) Exercising more than one remunerated activity in the public administration.
- b) Conducting business or negotiating private contracts immediately related to the performance of their official duties.

II. In addition to being subject to the provisions of section I of this Article, career public servants may not exercise functions within the same entity when there exists between them a relationship to the fourth degree of consanguinity or the second degree of affinity, as determined by the Family Code.

That statute also institutes the administrative career for the public sector, under the principles of equality of opportunity, merit, capacity and permanence, subject to efficient and productive performance.

It should be noted that the scope of application⁸ of the Civil Service Statute includes all public servants providing services to any entity of the State, i.e. the executive branch (including decentralized, autonomous, independent entities), the legislative branch, the judicial branch, and the municipalities, independent of or complementary to its legal provisions governing those activities individually.

The Civil Service Statute is supplemented by Supreme Decree 25749 of April 20, 2000, Articles 15 (Duties) and 17 (Incompatibilities) of which establish rules to ensure compliance with the provisions of the Civil Service Statute, through internal regulations within each entity.

In the context of the Civil Service Statute (Articles 12, Ethical Principles, and 13, Promotion of Codes of Conduct), there are a number of entities, including the Office of the Comptroller General, National Customs, Chamber of Deputies, the Senate, and the Supreme Court of Justice, that have prepared ethical codes, regulations or principles of conduct with provisions that promote ethical values and principles, regulating the behavior and conduct of their employees in the exercise of their official and administrative duties.

In addition, the Office of the Comptroller General (CGR), as the oversight body for ex-post external control, has issued rules governing the ethical behavior of:

- Public servants of the CGI who perform governmental control activities.
- Public servants of the internal audit units of the public sector.

III. Career employees of the public education service, the rural health service, and the foreign service are excluded from the incompatibility referred to in section II of this Article.

IV. University teachers and professors, medical professionals and paramedics working for the health service, as well as persons engaged in cultural and artistic activities, may perform remunerated functions in several entities of the public administration, subject to time constraints.

V. On an exceptional basis, the Superintendency of the Civil Service may waive the relationship prohibitions of Section II of this Article, where justified, provided the person in question has demonstrated qualifications for career employment.

Article 12. Principles. The public service must be inspired by the ethical principles and values of integrity, impartiality, probity, transparency, responsibility and efficiency so as to guarantee proper service to the public.

Article 13. Promotion of codes of ethics. Public entities must promote policies and standards of conduct governed by ethical principles and values to guide the personal and professional activity of their servants, and their relationship to the public. All public entities must adopt a code of ethics, prepared by the same entity or a similar entity, in accordance with the administrative organization system. Mechanisms must be instituted to ensure the practical evaluation of the provisions of codes of ethics, and in this way to contribute to their development, strengthening and effective enforcement. Public servants are bound by the respective institutional code of ethics as of the time they begin their duties.

Article 14. Gifts. Public servants are prohibited from accepting gifts, benefits or any other type of advantage from any individual or collective person, public or private, national or foreign, intended to secure favor, directly or indirectly, from their official actions or to exert influence on other public servants for similar purposes, without prejudice to criminal penalties.

⁸ While the Civil Service Statute covers all public servants, it provides that certain administrative careers (in the judiciary, the Attorney General's Office etc.) are subject to specific legal provisions.

- Independent auditing and consulting professionals and firms providing audit services to the public sector.

The relevant provisions are contained in the Code of Ethics of the CGI (R/AS-006) and their Regulations (R/AR-008, P/AR-170 and P/AR-171), the General Rules on Government Audit No. 213, the Code of Ethics of the Government Auditor, the Annual Declaration of Independence and Adherence to the Code of Ethics of the Government Auditor (CE/03), in the document entitled Challenging and Excusing CGI Personnel in Government Audits (P/SL-046) and in the Principles, General and Basic Standards for Internal Government Control (CI/08).

In addition, given the sensitivity of government purchases and contracts, special mention should be made of the special provisions in Supreme Decree 27328 of January 31, 2004 (Procedures for Contracting for Goods, Works, General Services and Consulting Services), which establishes a series of rules for the ethical conduct of public servants involved in government procurement activities, and sets forth values and principles to guide this important activity.

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.

Rules of conduct established in the legal provisions described above, and other supplementary legal provisions in Bolivia, have mechanisms to ensure their proper enforcement. Those measures are reflected in the texts themselves, and in other specific provisions. They deal with both prevention and punishment.

1. An essential text is Law 1178 on Government Administration and Control (SAFCO Law) of July 20, 1990, which calls for the creation of administration and control systems under a system of accountability for the public service.

The essential objectives of the systems established in that Law are to ensure efficient programming, organization, execution, control and use of public funds.

The government control regime contained in that provision is designed to improve efficiency in the collection and use of public funds, the reliability of information provided by public entities, the accountability of public servants for their functions and duties, and for the form and manner in which public funds entrusted to them are used.

In this respect, the law establishes the System of Accountability for the Civil Service and determines the scope of the various classes of responsibilities (administrative, executive, civil and criminal). Specifically, Article 28 provides that any public servant is responsible for the results of his official actions, and Article 29 establishes administrative responsibility when the actions or omissions of public servants violate the rules governing official conduct. This class of responsibility is determined through internal procedures in each entity, with penalties ranging from a fine of up to 20% of monthly remuneration, to suspension for up to 30 days, or dismissal, depending on the severity of the offense.

2. The internal procedure is governed by Article 13 and following of Supreme Decrees 23318-A of November 3, 1992 ((Regulations Governing the Responsibility of Public Servants, Article 13 and ff.), 26237 (amending Supreme Decree 23 318-A), and 26319 (Regulations Governing Appeals in the Civil Service), the Regulatory Provisions of the SAFCO Law, and the Civil Service Statute.

3. Another important legal provision is the Civil Service Statute, Articles 16 (Accountability for Civil Service) and 17 (Disciplinary Regime)⁹ confirm the scope of the responsibilities of every public servant, without distinction as to grade, in the context of the SAFCO Law.

4. Supreme Decree 26115 of March 16, 2001 (Basic Rules of Personnel Administration), regulating the SAFCO Law and the Civil Service Statute, governs the conduct of public servants with respect to mechanisms and procedures of entry, permanence, training and retirement from the public service, including:

- (i) Staffing levels for public institutions, following qualitative and quantitative identification of requirements and possibilities, using transparent and competitive procedures for the recruitment and selection of personnel.
- (ii) Performance appraisal for public servants, using the principles of transparency and publicity, and requiring that results be verifiable and measurable, pursuant to the Civil Service Statute.
- (iii) Mobility, promotion and retirement of public servants, based essentially on performance capacity.
- (iv) Training for public servants on the basis of the entity's requirements and personal development needs.
- (v) Registry of information generated by all procedures and components of the Personnel Administration System.

It also regulates and establishes the objectives, scope, form of entry, conditions and other permanence, and retirement from the administrative career stipulated in the Civil Service Statute.

5. Supreme Decree 27328 of January 31, 2004, regulating the SAFCO Law, includes provisions for the proper observance of rules of conduct for public servants in relation to the activities, modalities and procedures that must be followed in the contracting of goods and services. As noted earlier, it also establishes mandatory rules for the ethical conduct of public servants involved in contracting procedures, within the context of control and responsibility established by the SAFCO Law.

An important aspect is that this rule establishes, with specific reference to the contracting of goods and services, a procedure that allows for administrative appeals and challenges of decisions that affect the transparency, equality and impartiality of participants in the various forms of contracting.

6. Under the general regime of sanctions, mention should be made of Decree Law 10426 of August 23, 1972, as well as Law 1768 of March 10, 1997 (the Criminal Code)¹⁰, which brings

⁹ Article 16. Accountability for public functions. Every public servant covered by this law, without distinction as to grade, takes full responsibility for his actions or omissions, and is accountable to the corresponding authority or body for the way in which he performs his duties and for the results obtained. Elected officials, appointed officials, and senior career officials are individually or collectively accountable for the proper and transparent administration of the entities under their responsibility, and for achieving reasonable results in terms of efficiency, economy and effectiveness. Article 17. Disciplinary regime. The disciplinary regime defines the treatment of situations that contravene the statute, administrative law, and the rules governing the official conduct of each entity, pursuant to the System of Accountability for the Civil Service regulated by Law 1178 on Governmental Administration and Control and its regulations.

¹⁰ Decree Law 10426 of August 23, 1972 implemented the Bolivian criminal code, and contains rules applicable to the anticorruption campaign. As well, law 1768 of February 10, 1997, which gave legal status to the criminal code prior to 1997, includes amendments on this issue.

together within a single law a set of provisions defining offenses and penalties enshrined in regulations consistent with the guidelines of the Inter-American Convention against Corruption.

Special attention should be drawn to the rules contained in Title II, Title III and Chapter I of Title VI. Chapter I of Title II (Crimes against the Civil Service) of the Criminal Code regulates and punishes certain crimes committed by public officials in the exercise of their duty¹¹, and Chapter II addresses crimes by private individuals¹² with respect to public servants or their acts.

Chapter I of Title III covers judicial crimes by judges or private persons¹³, and Chapter II covers crimes committed by private individuals against judicial decisions¹⁴. As well, Chapter III of that Title (which was incorporated through Law 1768) establishes a criminal and administrative system against legitimizing illicit gains¹⁵.

Chapter I of Title VI regulates and punishes a series of crimes by public servants and private individuals affecting the national economy.¹⁶

7. Law 2445 of March 13, 2003, establishes judicial procedures for trying the President of the Republic, the Vice President of the Republic, Ministers of State, and departmental prefects, for crimes committed in the exercise of their functions.¹⁷

8. Law 2175 of February 13, 2001 (Law constituting the Attorney General's Office) regulates the authorization, powers and functioning of the Attorney General's Office, which is the legal body responsible for promoting action before the courts and defending legality and the interests of State and society in accordance with the Constitution and laws of the land. This Law also provides guidance for prosecutors in the exercise of their powers, and defines the attributes and

¹¹ Embezzlement, Misappropriation, Passive Bribery, Improper Use of Influence, Benefits by Reason of Position, Failure to Declare Assets and Income, Negotiations Incompatible with the Exercise of Public Functions, Extortion, Exactions, Decisions Contrary to the Constitution, Dereliction of Duty, Illegal Appointments.

¹² Passive Bribery, Anticipation or Prolongation of Functions.

¹³ Perjury, Passive Corruption of Judges, Collusion between Judges and Attorneys, Denial or Delay of Justice.

¹⁴ Escape, Assisting Escape.

¹⁵ Legitimation of Illicit Gains, Administrative Regime Governing Illicit Gains

¹⁶ Contracts Harmful to the State, Breach of Contract, Anti-Economic Conduct, Breach of Confidence, Illegitimate Contributions and Advantages, Fictitious Corporations or Associations, Tax Evasion.

¹⁷ This Law applies to the following crimes:

(i) Treason and partial or total subjugation of the nation to foreign domination, pursuant to Article 17 of the Constitution and Articles 109 and 110 of the criminal code.

(ii) Violation of the individual guarantees enshrined in the First Part of the First Chapter of the Constitution (Articles 5, 6, 7, 9, 10, 12, 13, 14, 15, 16, 17, 20, 21, 23, 26, 27, 28, 29, 30, 33).

(iii) Improper use of influence.

(iv) Negotiations incompatible with the exercise of public functions.

(v) Issuing resolutions contrary to the Constitution.

(vi) Anticipation or Prolongation of Functions.

(vii) The crimes specified by Articles 146, 150, 151, 152, 153, 163 of the Criminal Code.

(viii) Genocide.

(ix) Bribery and Corruption.

(x) Any other crime committed in the exercise of their functions.

scope of the investigation bodies (the judicial police and the Institute of Forensic Investigations)¹⁸, as well as the disciplinary regime governing prosecutors.

Within the judiciary, in addition to the rules described above, points 1 to 7 of which are applicable in particular to its administrative units, there is a series of legislative provisions to ensure the proper performance of judicial functions. This legislation includes Law 1455 of February 13, 1993 (Judicial Organization Act) discussed earlier, and Law 1817 of December 22, 1997 (Judicial Council Law), creating the Judicial Council as an administrative and disciplinary body of the judicial branch, with powers and attributes covering: (i) policies for the development and planning of the judiciary, (ii) administration, management and execution of the economic resources and funds of the judiciary, (iii) definition and execution of infrastructure policies, (iv) discipline and control over judges, support personnel and administrative officials, and (v) regulation, coordination and information.

This legislation also governs the Judicial Institute, the body for technical training of judicial personnel, and establishes the judicial career.

In terms of discipline and control over judges, support personnel and administrative officials, Title V of that Law establishes the disciplinary regime that, according to Article 37 (Responsibility), provides that "any judicial official has civil, criminal and disciplinary responsibility for actions or omissions that obstruct the normal activities of the judiciary, or impede the correct and timely administration of justice". Article 38 (Breach of Discipline), 39 (Very Grave Offenses), 40 (Grave Offenses), 41 (Minor Offenses) specifically typify punishable conduct, and Chapter II, Disciplinary Procedures (Articles 42 to 52) and III, Imposition of Sanctions (Articles 53-56) contain provisions governing the form, procedure and rules applicable to disciplinary proceedings and penalties for each type of conduct, depending on whether it is classified as very grave, grave or minor.

Supplementary and regulatory provisions to that instrument include:

(i) Regulations Governing Disciplinary Procedures in the Judiciary, approved by Order 32/200, governing disciplinary procedures¹⁹ and sanctions for acts or omissions classified as minor, grave and very grave, in accordance with Law 1817, committed by judicial officials.

(ii) Regulations Governing the Judicial Career System, approved by order 239/2003, governing the entry, permanence and dismissal of judicial officials with jurisdictional powers, based on evaluation and recognition of merit, as well as their rights, obligations, incompatibilities and labor rules.

(iii) Regulations Governing the Administrative Career, approved by order 247/2003, establishing a system to promote efficiency in the administrative services of the judiciary. That provision also determines the rights, duties, responsibilities, prohibitions, and incompatibilities of judicial administrative officials.

¹⁸ The Law of Criminal Procedures establishes and defines the scope of the powers and functions of the investigative bodies

¹⁹ The established disciplinary procedure provides that, when complaints are laid, there must be an investigation that may recommend the opening of proceedings. Upon the recommendation of the investigating tribunal, summary proceedings will be initiated (taking of statements and evidence) concluding with issuance of a decision of proven or unproven. This decision may be appealed to the Judicial Council, which may confirm, cancel or revoke the challenged decision.

(iv) Regulations Governing Incompatibilities and Improper Use of Influence, approved by order 43/99, establishing incompatibilities and control and monitoring mechanisms.

In the legislative branch, the Ethics Committees of the House of Deputies and Senate, established in accordance with Article 255 of Law 1779 of March 19, 1997 (Law Amending the Electoral System), have the function of hearing, investigating, issuing reports and opinions, and qualifying complaints on grave offenses and breaches of ethical standards committed by parliamentarians in the exercise of their functions. Under this procedure, those reports and opinions of the committees must be submitted and considered by the full chamber, which may apply sanctions, based on recommendations of the committee. The regime governing the rights, duties, formal makeup of the committee, procedure and sanctions is determined in the Ethical Regulations of each chamber.

The Ethical Regulations of each chamber (Senate and Deputies) establish various sanctions for offenses committed in the exercise of parliamentary functions.²⁰

There are also the Legislative Committees (Deputies and Senators). An especially important one is the Committee on the Constitution, Justice, Judicial Police, Attorney General's Office, Human Rights and Electoral Regime", which considers complaints brought against members of the chamber, and issues opinions in trials against Justices of the Supreme Court, magistrates of the Constitutional Tribunal, Judicial Councilors, and the Attorney General. In this case, the Senate has the power to hear and judge those public servants, upon accusation by the Chamber of Deputies as a result of a complaint brought by an injured party or a member of the public (Articles 62 (4) and 66(1))²¹.

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

The objective results from application of these standards are broken down according to the number of proceedings (reports) of administrative responsibility conducted by the Comptroller General, and the number of persons in positions determined to have administrative responsibility. The analysis of these positions provides a valid indicator that exemplifies the degree of effectiveness of the control mechanisms established in Bolivian legislation, particularly

²⁰ Article 10 of the Ethical Regulations of the Senate establish sanctions including: a) public reprimand, b) a fine equal to 5 to 30 days of allowances, c) suspension from functions for a legislative session, d) temporary suspension without pay for one to six months, e) permanent suspension, implying loss of mandate.

Article 20 of the Ethical Regulations of the Chamber of Deputies establish as penalties: a) recommendation by the Chamber that the deputy should rectify his conduct, b) reprimand in reserved session, c) public reprimand, d) fine equal to five to 30 days pay, e) temporary suspension from the Chamber for five days to one year, without allowances, f) definitive suspension, implying loss of mandate, pursuant to Article 67 (4) of the Constitution.

²¹ Constitution, Article 62. The Chamber of deputies shall:

4. Bring accusations before the Senate against magistrates of the Supreme Court for crimes committed in the exercise of their functions.

Article 66. This Chamber has the powers to: (i) consider accusations by the Chamber of deputies against Justices of the Supreme Court and the Attorney General of the Republic, pursuant to the Responsibilities Law. The Senate shall try, in sole instance, members of the Supreme Court and the Attorney General, imposing penalties and responsibility, upon accusation by the Chamber of Deputies, based on a complaint from an injured party or from any citizen. Impeachment requires a two-thirds vote of members present. A special Law will provide for the procedures and formalities of these trials.

considering that violation of administrative law in many cases involves the violation of ethical precepts. The following table presents data for controls of this type, during fiscal years 2002 and 2003.

DEPARTMENT	ADMINISTRATIVE LIABILITY	
	NO. REPORTS	NO. POSITIONS
LA PAZ ADMINISTRACION NACIONAL	62	610
LA PAZ ADMINISTRACION DEPARTAMENTAL	23	68
SANTA CRUZ	41	348
COCHABAMBA	9	111
CHUQUISACA	5	18
ORURO	15	84
POTOSI	12	53
TARIJA	9	74
BENI	6	9
PANDO	3	5
TOTAL	185	1380

d) Not applicable

2. Conflicts of interests

a. *Are there standards of conduct in your country regarding the prevention of conflicts of interest in the performance of public functions? If yes, briefly describe them, indicating aspects such as to whom they apply and the concept on which they are based, and list and attach a copy of the related provisions and documents.*

Bolivian law contains many rules of conduct designed to prevent conflicts of interest in the performance of public functions, some of which are incorporated into the Constitution and others in specific legislation of differing rank.

In Bolivian legislation, the rules governing conflict of interest are generally designed as provisions establishing incompatibilities, inabilities, prohibitions or requirement for the exercise of a specific activity. While several specific rules (articles) described above (1a and 1b) are also applicable to preventing conflicts of interest, the most important ones are listed below.

With respect to the Constitution, the regulations contained in its Articles 54, 89 and 116 (ix)²² are essential rules for avoiding conflicts of interest in the legislative, executive and judicial branches respectively.

²² Article 54. I. Senators and Deputies may not acquire or take in lease, for themselves or for a third party, any public properties, nor may they accept contracts for works or provisioning with the State, nor obtain from the State any concessions or other personal advantages. During the period of their mandate, they may not be public servants, employees, agents or advisers or managers of State entities, nor of corporations or companies that negotiate with the State.

II. Violation of these precepts implies loss of popular mandate, by resolution of the respective chamber, pursuant to Article 67 (4a) of the Constitution.

In addition, the Civil Service Statute, in Article 10 (Conflict of Interest) and Article 11 (Incompatibilities), establishes regulations designed to avoid or prohibit certain activities by public servants that could involve conflict in the exercise of their public functions. Thus, Administrative Resolution SSC-002/2002, from the Superintendency of the Civil Service, regulates the procedures to be followed for exceptionally authorizing the exercise of functions in the case of incompatibility on grounds of marital or blood relationship.

Independent of the rules indicated above, there are specific legal provisions such as Law 2341 of April 23, 2002 (Law of Administrative Procedures), Article 10 of which establishes that an administrative authority must excuse himself from considering any administrative proceeding if there is conflict of interest with the applicant (family relationship) or a business relationship with any firm involved in the process. As well, Law 1600 of October 28, 1994 (SIRESE) provides, in Article 6, that no person may be appointed as General Superintendent of the SIRESE or as Sectoral Superintendent if there is a conflict of interest with companies subject to regulation by SIRESE (i.e. companies in the oil, water, electricity, telecommunications and transport sectors). Similar regulations exist in the laws governing the Financial Regulation and Natural Resource Regulation Systems.

Law 2028 of October 28, 1999 (Municipalities Law) establishes, in Article 30 and 46, specific prohibitions barring councilors and mayors from intervening in matters in which there might be conflict between their private interests and the public interest.

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.

Bolivian legislation provides for determining responsibilities for violating laws governing the conduct of public officials, as detailed in the response to question 1 (b). In particular, the legal provisions contained in points 1, 2, 3, 7 and 8 of Chapter I (1b) are applicable for ensuring effective compliance with the legal provisions enunciated in paragraph 2a.

In the specific context of the Legislature, failure to observe the provisions governing conflict of interest (Article 54 of the Constitution) may be grounds for loss of popular mandate by decision of the corresponding chamber, pursuant to Article 67²³ of the Constitution, which authorizes temporary or permanent suspension of a member, by a two-thirds vote, for grave offenses committed in the exercise of their functions.

In the judiciary, the rule indicated in the response to question 1b of Chapter I applies.

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

Article 89. The following are prohibited from being elected as President or Vice President of the Republic:

1. Ministers of State or presidents of economic or social entities in which the State has an interest, unless they have resigned their position six months before the election.
2. Relatives by blood or marriage, within the second degree, according to the family code, of persons serving as President or Vice President of the Republic during the last year prior to the election.
3. Members of the armed forces on active duty, members of the clergy, and ministers of any religion.

Article 116 (IX). The judicial function is incompatible with any other public or private remunerated activity, with the exception of university professorships.

²³ Article 67. Each chamber has the power to: 4. Temporarily or definitively suspend, by a two-thirds vote, any of its members for grave offenses committed in the exercise of their functions.

Results compiled by the Superintendency of the Civil Service, as the administrative body responsible for promoting codes of ethics and regulating conflicts of interest, show that during fiscal years 2002 and 2003 a total of 20 cases were handled requiring authorization for the exercise of public functions covered by incompatibility rules. The results of those cases were as follows:

- Six of them resulted in authorization.
- Three resulted in denial of authorization.
- Nine were abandoned by the applicants.
- Two were not resolved, because the civil servants in question resigned.

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.

Bolivian legislation provides for a structured and complex revenue and budgeting system for preserving and ensuring adequate use of resources. The body of legislation, of varying ranks, comprises: (i) Constitutional provisions governing the duties, attributes, mechanisms and planning controls over national and departmental budgets; (ii) the legal provisions contained in the annual budget; (iii) regulations governing cash management, accounting, planning, investment, etc.; (iv) legal provisions governing specifically the efficient use of resources by public servants; and (v) internal and institutional rules of specific application in the public entity. Following is a summary of main principles and provisions:

Article 8 (h) of the Constitution establishes the duty of every person to safeguard and protect the public property and the public interest. As well, the President of the Republic (Article 96 (6 and 7), taken together with Article 147 of the Constitution) has the power to administer national revenues and to decide how they shall be invested, as well as to present the Legislature with national and departmental budgets for the fiscal year. Under Article 146 of the Constitution, the executive is empowered to decide the standards used in preparing and presenting draft budgets for the entire public sector. Under the controls stipulated by the Constitution, the Legislature (Article 59.3) is empowered to consider and fix spending by the public administration for each fiscal year, on the basis of the general budget presented by the executive. The Legislature also has the power to oversee development plans and to authorize and approve loans that encumber general State revenues.

The legislation governing public expenditure is the General Budget Law (for fiscal year 2004, Law 2627 of December 30, 2003), which approves institutional budgets of the public sector for the respective fiscal year. It also establishes the principles and policies for using and managing public funds.

As noted earlier, Law 1178 on governmental administration and control, of July 20, 1990 (SAFCO Law) calls for the creation of administration and control systems under a regime of

responsibility for public management. The basic objectives of the systems established in that Law are to ensure efficient programming, organization, execution, control and use of public funds.

As the body responsible for issuing secondary rules of government control, in the context of the SAFCO Law, the office of the comptroller general issued Resolution CGR-1/170 3/2002 approving "Guidelines for Application of Principles, General Standards and Basis of Internal Government Control", which must be respected by all entities of the public sector.

Those guidelines are very important, distilling the principles, general rules and basis of internal government control stipulated by Law 1178 on Government Administration and Control, of July 20, 1990 (the SAFCO Law). It thus contributes to the effective implementation of the SAFCO systems and promotes respect for administrative legal rules relating to:

- Protection of public funds against irregularity, fraud and error.
- The provision of useful, timely and reliable operational and financial information.
- Operational efficiency.
- Fulfillment of plans, programs and budgets.

Among the legal provisions that specifically regulate the efficient use of public funds by public servants, mention may be made again of Law 1178 on governmental administration and control of July 20, 1990 (the SAFCO Law), the first article of which provides that public servants are responsible for their acts, and must account for the use of public funds entrusted to them, as well as being responsible for the manner and outcome of their application. Supreme Decree 23318-A of November 3, 1992, regulating the SAFCO Law, provides (Article 4) that funds invested in operations must be reasonable in relation to the outcome achieved.

As well, the Civil Service Statute (Article 8.g) provides that public servants must see to the economical and efficient use of the property and materials earmarked for their administrative activity. Article 9.c prohibits public servants from using public property or resources for private, political or other purposes not compatible with their official duties.

In the judicial area, Law 1455 of February 13, 1993 (Judicial Organization Law) and Law 1817 of December 22, 1997 (Judicial Council Law), discussed earlier, are also intended to guarantee proper official conduct in the management of public resources.

The management and use of financial resources of the Legislature (Chamber of Deputies and Senate) are governed by the respective general regulations of the chambers, and are administratively under the responsibility of the *Oficial Mayor* (Chief Clerk) and the relevant administrative units. According to Bolivian legislation, the acquisition, administration, conservation and disposal of properties as well as the contracting and provision of services to the chambers are subject to the rules and procedures established by the SAFCO Law.

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.

Independent of the oversight provisions for the approval of the national budget, described in section 3.a, of, Article 42 (2) of the Constitution provides for the suspension of civil rights for public embezzlement or fraudulent bankruptcy.

Also applicable is Article 67 (4) of the Constitution, which provides that the chambers of the Legislature may suspend, temporarily or permanently, any of their members for grave offenses committed in the exercise of their functions. As noted earlier, this procedure may be triggered by a breach of the Legislature's ethical rules and, in the case of permanent officials of each chamber, by the mechanisms stipulated in the SAFCO Law and its regulations.

Once again, Law 10426 of August 23, 1972, and Law 1768 of March 10, 1997 (Criminal Code) contain regulations for the enforcement of those rules of conduct. Of particular applicability are Articles 142 (embezzlement), 143 (criminal embezzlement) and 144 (misappropriation) of Title II (Crimes against the Civil Service) of the Criminal Code, which are intended to prevent improper or illegal use of public funds administered by public servants. Also important in this regard is Article 224 (anti-economic conduct) of Chapter I of Title VI, which punishes public officials for poor administration or for damage to the assets and interests of the State.

As well, Law 2445 of March 13, 2003 is applicable to cases where the violator is the President of the Republic, the Vice President of the Republic, a Minister of State, or a departmental prefect, especially for crimes involving misuse of public funds as defined above.

Bolivian legislation establishes liabilities for violation of the rules governing the public service. Article 28 of Law 1178 (SAFCO Law) provides that any public servant is responsible for the results of the performance of his duties, functions and attributes. That rule establishes four classes of responsibility relating to the exercise of public functions (Articles 29, 30, 31 and 34): (i) administrative responsibility, (ii) civil responsibility, (iii) executive responsibility, and (iv) criminal responsibility.²⁴

²⁴ Article 29. A responsibility is administrative when the action or omission violates the juridical-administrative mechanism and the rules regulating the behavior of public servants in the exercise of their functions. The competent authority shall apply, according to the seriousness of the violation, penalties varying from a fine of up to twenty percent of the monthly remuneration, suspension of up to thirty days, or dismissal.

Article 30. A responsibility is executive when the authority or executive: (1) fails to account as required under paragraph c) of Article 1, and Article 28 of this Law; (2) fails to comply with the provisions of the first paragraph and paragraphs d), e), or f) of Article 27 of this Law; or (3) it is disclosed that deficiencies or negligence of the executive exercise of functions are of such significance that they will not permit achievement under existing circumstances of reasonable results in terms of effectiveness, efficiency and effectiveness. In such cases, the penalties provided under paragraph g) of Article 42 of this Law shall apply.

Article 31. A responsibility is civil when the action or omission by a public servant or by private natural or legal persons results in damage to the State in an amount quantifiable in monetary terms. The determination thereof shall be subject to the following precepts:

- a) The top ranking official shall be held co-accountable for authorizing improper use of State goods, services or resources, or where such improper use has been made possible through deficiencies in managerial and internal control systems which reasonably could have been implemented by the entity.
- b) Civil responsibility is incurred when natural or legal persons, not being public servants, benefit unduly from public resources or are the cause of damages to State property.
- c) Where there are several persons responsible for the same actions or events resulting in damages to the State, they shall be held jointly responsible.

Article 34. Responsibility is criminal when the action or omission of the public servant or private parties falls under this definition under the Criminal Code.

When the facts examined show indications of civil or criminal responsibility, the auditor of the entity or the corresponding public servant must report this to the pertinent legal unit, which will lay the facts before the Attorney General's Office or request a court to take the appropriate measures.

There is a special mechanism for exerting government control in the form of audits, which are objective, independent, impartial and systematic examinations of the financial, administrative and operational activities of public entities. The results of such audits must be reported to the Comptroller General.

When such audits point to violations of law, the Comptroller General has the power to issue a preliminary finding of responsibility to the senior executive responsible for the entity or the persons involved. That report is subject to a clarification process in which the persons involved have the right to defend themselves, after which the Comptroller General will issue a final opinion (supplementary report), ratifying or amending the initial finding. In case of a finding of responsibility, that opinion, together with the report and substantiating documentation, will be used as evidence for the appropriate administrative or judicial action.

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

The information provided in section 1.c of this chapter applies to the rules and mechanisms indicated earlier. This is supplemented with statistical information on proceedings for civil responsibility (i.e. those in which there has been economic damage to the State) and criminal responsibility (i.e. the commission of crimes). These are important indicators, since they demonstrate the effectiveness of the mechanisms established for this purpose. The following information summarizes statistics recorded by this control body pursuant to the SAFCO law during fiscal years 2002 and 2003.

DEPARTMENT	CIVIL LIABILITY	
	NO. REPORTS	NO. POSITIONS
LA PAZ ADMINISTRACION NACIONAL	171	2027
LA PAZ ADMINISTRACION DEPARTAMENTAL	104	2269
SANTA CRUZ	139	1971
COCHABAMBA	126	1281
CHUQUISACA	54	758
ORURO	76	901
POTOSI	91	1115
TARIJA	64	599
BENI	56	1060
PANDO	16	639
TOTAL	897	12,620

DEPARTMENT	CRIMINAL LIABILITY	
	NO. REPORTS	NO. POSITIONS
LA PAZ ADMINISTRACION NACIONAL	23	107
LA PAZ ADMINISTRACION DEPARTAMENTAL	22	34
SANTA CRUZ	12	49
COCHABAMBA	9	10
CHUQUISACA	---	---
ORURO	9	14
POTOSI	1	1
TARIJA	6	13
BENI	7	18
PANDO	5	6
TOTAL	94	252

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.*

Bolivian legislation contains clear rules requiring public servants to report acts of corruption of which they become aware in the public service.

The SAFCO law and regulations, which cover the entire public sector, contain specific provisions that require public servants to report to the competent authorities any acts of corruption in the public service of which they become aware. Specifically, Article 35²⁵ of that law requires public servants to report to the Attorney General's Office all cases that come to their attention in which there are indications of a crime or of economic damage to the State.

As well, Article 61²⁶ of Supreme Decree 23318-A of November 3, 1992, expressly requires public servants or other professionals who identify a crime to report it to the pertinent legal unit.

²⁵ Article 35. When the acts or facts examined reveal indications of civil or criminal responsibility, the public servant or the auditor shall report them to the pertinent legal unit which shall petition directly, through the competent legal authority, to the judge in charge to take all precautionary measures in preparation of a legal action, if justified, or shall submit a formal accusation before the prosecuting agency.

²⁶ Article 61 (indications of criminal responsibility). Public servants or other professionals under contract who discover indications that a crime has been committed must prepare a report, with due diligence and reserve, advising the pertinent legal unit of this fact. The report will contain a list of acts or omissions, together with evidence or indications of where the evidence may be found.

Articles 64 and 65²⁷ of that decree make auditors and lawyers of public entities specifically responsible for providing timely information on any irregularities or the initiation of judicial action.

Moreover, failure to report is treated as a crime pursuant to Article 178 of the criminal code, which expressly states that a judge or public servant who, by reason of his position, is required to report or file charges for crimes and fails to do so will be punished by imprisonment of three months to one year and a fine of 70 to 240 days, unless he can demonstrate that circumstances were beyond his control.

Independent of the above, Law 1817 of December 22, 1997 (Judicial Council Law) provides, in Title V, Disciplinary Regime, Article 40 (2), that the failure to initiate disciplinary action against any staff member with who has committed a grave offense will itself be treated as a grave offense. In concordance with this provision, Article 107 of Law 2175 of February 13, 2001 (Attorney General's Office Law) treats as a very grave and punishable offense the failure to report crimes committed by criminal prosecution officials.

²⁷ Article 64 (responsibility of the auditor). For purposes of determining the responsibility of auditors or specialized consultants, Article 20 of the Code of Civil Procedure will apply, and in addition the following factors will be considered. Such persons will be deemed accountable if:

- a) They fail to excuse themselves from a task in case of incompatibility or clear conflict of interest.
- b) They fail to submit a timely report, in writing, to the senior responsible official about any possible incompatibility or conflict of interest.
- c) The audit report does not provide clear and full information on possible irregularities detected, or omits any information that might be useful to those involved.
- d) The annual report referred to in Article 27.e of Law 1178 does not contain an opinion on the reliability of records and on any significant irregularities in financial statements.
- e) They fail to comply with government audit standards

II. Such failures will give rise to:

- a) in the case of a public servant, internal proceeding to determine administrative responsibility, without prejudice to civil or criminal responsibility.
- b) In case of auditors, specialized consultants, or firms, immediate cancellation of contract pursuant to Article 569 of the Civil Code, with return of all payments, without prejudice to civil or criminal responsibility. For these purposes, the contract must stipulate the applicability of that Article.

Article 65 (responsibility of the lawyer). For purposes of determining the responsibility of lawyers, Article 20 of the Code of Civil Procedure will apply, and in addition the following factors will be considered. Such persons will be deemed accountable if:

- a) They fail to excuse themselves from issuing an opinion or representing a client in a case of incompatibility or clear conflict of interest.
- b) They fail to submit a timely report, in writing, to the senior responsible official about any possible incompatibility or conflict of interest.
- c) They fail to request a judge to take the appropriate measures, or to make a report to the Attorney General's Office, in cases where a crime has been committed, after reporting the fact to the senior executive of the entity.
- d) The legal report does not provide clear and full information on possible irregularities detected, or omits any information that might be useful to those involved
- e) They fail to advise the senior executive of the entity, in advance and in writing, that an appeal would not be appropriate.

II. Such failures will give rise to:

- a) in the case of a lawyer who is a public servant, internal proceeding to determine administrative responsibility, without prejudice to civil or criminal responsibility.
- b) In case of contracted attorneys or legal firms, immediate cancellation of contract pursuant to Article 569 of the Civil Code, with return of all payments, without prejudice to civil or criminal responsibility. For these purposes, the contract must stipulate the applicability of that Article

Moreover, Article 286²⁸ of the Code of Criminal Procedure requires all public servants to report prosecutable crimes (which implies all crimes relating to public corruption), of which they become aware in the course of their duties. As well, Article 284 of that code empowers any person who becomes aware of a prosecutable crime to report it to the public prosecutor or the national police.

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.

The legal provisions and mechanisms indicated in section 1.b of the first chapter of this questionnaire are the instruments generally applicable for the enforcement of the rules indicated in section 4.a.

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

At this time there are no statistics available covering all cases pursued by the Public Prosecutor, in terms of the total number of complaints received and processed.

d. If no such standards and mechanisms exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen the standards of conduct 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, and mechanisms to enforce compliance, in accordance with Article III (1) and (2) of the Convention.

While rules are already in existence that require public officials to report to the competent authorities any acts of public corruption of which they become aware, as well as mechanisms for enforcing compliance, further proposals have been prepared and submitted to Congress for consideration on this issue. These include the Draft Act for the Protection of Persons Reporting Corruption in the Exercise of Public Functions.

That proposal establishes the ability of private citizens, public officials and organizations to report acts of corruption in the public service, and provides protection for those persons who, in good faith, have reported such acts.

The protection called for in the draft proposal involves a program with the following characteristics and obligations of the State:

(i) Protection of the interests of the person lodging the complaint.

²⁸ Article 286 (obligation to report). The following persons are obliged to report prosecutable crimes:

1. Public officials and employees who become aware of the fact in the course of their duties;
2. Physicians, pharmacists, nurses and other persons in the medical sciences who become aware of the fact in the exercise of their profession or office.

The duty to report is not mandatory if the report would give rise to self-incrimination, or that of a spouse or partner, or a relative to the fourth degree of continuity or the second degree of affinity, or when the facts were learned under professional secrecy.

- (ii) Fulfillment of monetary, civil, labor, commercial, fiscal and administrative obligations contracted by the complainant before being admitted to the program, or resulting from the complaint.
- (iii) Protection for the complainant and his relatives.
- (iv) The provision of money to the complainant equivalent to his salary, if he has lost his job as a result of the complaint.

The proposal defines which persons are considered protected and subject to the protection program and establishes conditions for the acceptance of complaints by the competent body.

It makes the Office of the National Prosecutor against Corruption the competent body for preparing and implementing the program of protection for reporting acts of corruption.

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.*

Bolivian legislation contains constitutional and legal provisions of varying rank that establish systems for the declaration of income, assets and liabilities by public servants. That legislation includes:

The Constitution, Part One, Title IV on public officials, Article 45, provides that every civilian, military or ecclesiastical official is required, before taking office, to declare his income or assets, which will be verified according to law.

Article 53 of Law 2027 of October 27, 1999 (Civil Service Statute) provides that during a person's labor relationship with the administration, and even thereafter, regardless of the grounds for termination, a sworn statement of assets and income may be subject to verification at any time, and for this purpose public servants are required to provide sworn statements of assets and income (DJBR) and to update them regularly in accordance with regulations.

Article 54 of the law provides that the Comptroller General may request new DJBRs up until one year after a civil servant has left the administration.

Article 55 of the law provides that the Comptroller General shall direct and oversee the DJBR system and propose the corresponding regulations.

Supreme Decree 26257²⁹ of July 20, 2001, establishes rules and regulations for the functioning of the DJBR system in Bolivia. That decree was amended by Supreme Decree 27 349 of February 2, 2004, which came into effect on March 1, 2004.

²⁹ 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

According to those provisions, the DJBR is a constitutional obligation which all public servants must fulfill, without exception, before they take office. By virtue of Supreme Decree 27349, public servants must update the information in their DJBR on a regular basis, and within 30 days after the end of their labor relationship. The DJBR may also be presented voluntarily or at the express request of the Comptroller General. All DJBRs are presented personally to the Office of the Comptroller General.

The DJBR contains the following information:

- General data on the public servant.
- Data on the entity and position.
- Data on the last two entities in which the person worked.
- Spousal data.
- Data on the person's assets, classified as to: real property, urban and rural; mobile property subject to registration, and livestock; corporate shares, equity interests and other securities; bank accounts; cash holdings; others, such as copyright, trademark and patent royalties, insurance, financial claims, credit cards with credit balances.
- Liabilities, natural and legal debts with financial entities, State entities, and the taxation authorities.
- Gross income over the last 12 months.

When it comes to verification, the following rules apply:

- a) The Office of the Comptroller General is the only body competent to verify DJBRs and their updates.
- b) The Comptroller General may confirm the truthfulness of the DJBR, in coordination with other institutions.
- c) The Comptroller General is empowered to verify the reasonableness of the values recorded in the DJBRs, in coordination with other institutions.
- d) The Comptroller General has the power to conduct audits at the express request of the Financial Investigations Unit and the Jurisdictional Bodies and the Attorney General's Office, as part of a formal Investigation.

The result of these audits by the Comptroller General are covered in a report which will be remitted to the competent jurisdictional body or the requesting agency.

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

The most relevant results to date have been the successful implementation of the DJBR system nationwide. More than 250,000 declarations have been certified under the system. Following are statistics on the submission of declarations:

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

DPT.	FY 2002			FY 203			TOTAL
	Cat. A	Cat. B	Total	Cat. A	Cat. B	Total	
Beni	638	3400	4038	396	6475	6871	10909
Chuquisaca	1524	8886	10410	1295	4926	6221	16631
Cochabamba	2883	22986	25869	2319	10004	12323	38192
La Paz	9811	54630	64441	7702	22601	30303	94744
Oruro	928	3606	4534	775	8630	9405	13939
Pando	458	2216	2674	348	969	1317	3991
Potosi	917	7563	8480	782	7841	8623	17103
Santa Cruz	2574	21483	24057	1861	17119	18980	43037
Tarija	1056	9566	10622	856	2180	3036	13658
TOTAL	20789	134336	155125	16334	80745	97079	252204

The rules governing external controls, known as "the procedure for notification of entry and departure of public servants for control of DJBRs" (CE/17), establishes a mechanism whereby human resource officers appointed by the senior executive report the entry and departure of public servants within established time limits, in order to maintain updated information on this obligation and to apply criminal and administrative measures in case of omission. Currently 42% of all public servants at the national level are registered in this mechanism, and it is planned to register 100% by the end of June of this year.

With respect to access to a public servant's DJBR, this is a public document and is posted on the web page of the Comptroller General's office.

In terms of the use of these declarations, they have served as information in criminal proceedings against public servants who have committed crimes in the exercise of their function. Since January 1, 2002, only 20 requests from the judiciary have been handled, because previous regulations did not provide for the use of information from the DJBR.

At this time, the recently promulgated regulations call for the use of this means, and allow for the information to be delivered at the express request of the Financial Investigations Unit and at the request of the competent jurisdictional bodies and the Attorney General's Office, as part of a formal investigation.

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), (4) and (11)? If yes, list and briefly describe their functions and characteristics, and attach a copy of the related provisions and documents.*

Bolivian legislation provides for senior oversight bodies to enforce compliance with the provisions of sections 1, 2 and 4 of Article III of the Convention.

While in conceptual and legal terms, according to the Constitution, these oversight functions should fall within the field of responsibility of the senior bodies of each branch of State (executive, judicial and legislative), under Bolivian legislation there are senior bodies with specific powers of control over the provisions of the Convention. With respect to oversight functions in the administrative sphere relating to Article III (1 and 2), the Superintendency of the Civil Service, a public body created by Law 2027 of October 21, 1999 (Civil Service Statute), has the responsibility to enforce that legislation (which as explained earlier relates to Article III (1 and 2) of the Convention).

One of the essential functions of the Superintendency is to promote the adoption of codes of ethics in public entities and to oversee the functioning and management of the administrative career in public entities covered by the legislation.

Within public entities, and quite apart from the inherent obligation of oversight and supervision on the part of senior management and administrative authorities, there are Internal Audit Units that operate as part of the internal control system under the SAFCO law. These units, which are very important in combating corruption, have the essential functions of controlling, evaluating and analyzing application of administration systems, as well as the activities, operations, outcomes and procedures achieved or used by public servants in the exercise of their functions. Consistent with the legal framework, all audit reports are sent directly to the senior executive and oversight authorities, as well as to the Comptroller General's office.

In the judicial field, the Judicial Council created by Law 1817 of December 22, 1997 as the administrative and disciplinary body of the Judiciary has disciplinary and supervisory powers³⁰ over judges, support personnel and administrative officials, and conducts inspections for both administrative and disciplinary purposes of courts, tribunals and administrative bodies in order to verify compliance with duties and obligations.

With respect to oversight functions relating to the enforcement of Article III (4) of the Convention, as indicated in chapter II of this questionnaire, the Comptroller General's office is the entity responsible for verifying, controlling and supervising the income declarations of public servants.

³⁰ Order 32/2000 of March 28, 2000 approved the manual of functions for the Disciplinary Unit, the technical body of the Judicial Council, the essential functions of which are to conduct disciplinary proceedings within the judiciary, to undertake inspections and to recommend disciplinary policies and amendments to disciplinary procedures, for consideration by the Judicial Council.

The Comptroller General's office, as an administrative, technical and operating entity, is also the central body of governmental control and the senior audit authority of government, and exercises its powers and functions over all entities of the public service, including the administrative units of the Legislature and the Judiciary.³¹

The powers and functions of the Office of the Comptroller General, as defined in the SAFCO law and in Supreme Decree 23215 of July 22, 1992, are intended to improve transparency in public management and to make public servants accountable for the exercise of their functions.

Those legal provisions assign the Comptroller General's office a series of powers and functions of government control and audit that are relevant and effective in combating corruption:

- (i) Issuing basic rules for the governmental system of internal control and external audit.
- (ii) Conducting and supervising the external audit.
- (iii) Evaluating the effectiveness of internal control systems in public entities.
- (iv) Exercising oversight over public sector accounting systems.
- (v) Promoting the establishment of accounting and internal control systems.
- (vi) Conducting training and specialization programs for public servants.

With respect to the legislative branch, reference should again be made to the ethics committees of the Chamber of Deputies and the Senate established in accordance with Article 255 of law 1779 of March 19, 1997 (Law Amending the Electoral System), which exercise their functions throughout the constitutional turn. These consist of hearing, investigating, issuing reports and opinions, and qualifying complaints of grave offenses and disregard for ethical standards on the part of parliamentarians in the exercise of their functions. On this point, it is important to note that within the constitutional framework, pursuant to Article IV/116 of the Constitution, the control of constitutionality is exercised by the Constitutional Tribunal, which has the power to overturn laws, decrees and judicial decisions of all types on grounds of unconstitutionality (Article 120 (1) of the Constitution).

With respect to an oversight body responsible for enforcing Article III (11) of the Convention, there is no single body, but rather a group of units that exercise oversight and control, including those that may be called "social control mechanisms" and "oversight committees".

The national and departmental social control mechanisms are established under private law, with their own institutional statutes and regulations. They are recognized by Law 20235 of July 21, 2001 (Law on National Dialogue 2000), as organizations and institutions representing civil society that have the power of oversight and evaluation of public policies at the corresponding level, within the framework indicated by that law and by Supreme Decree 26564 of April 2, 2002.

³¹ The Scope of Application of the Government Administration and Control Law is the following:

Article 3. Managerial and control systems shall be established in all public sector entities, without exception. These are defined as the Presidency and Vice Presidency of the Republic, the Ministries, the Office of the Comptroller General, the Electoral Tribunals, the Bolivian Central Bank, the Superintendency of Banks and Insurance, the Development Corporations, the State financial intermediaries, the Armed Forces, the National Police, the Departmental Governments, the Universities and the Municipalities, all institutions, organizations and enterprises belonging to national, departmental and local governments, and every other legal person or entity in which the State is a majority equity owner.

The oversight committees, which represents civil society before municipal governments, have oversight and control powers over the management and investment of municipal resources in the context of Law 1551 of April 20, 1994 (Law on Popular Participation) and its regulatory decrees; Law 1701 of July 17, 1996 (amending the Law on Popular Participation), Law 2028 of October 28, 1999 (Municipalities Law), and Law 2235 of July 21, 2001 (Law on National Dialogue 2000) and Supreme Decree 26564 of April 2, 2002.

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

The statistics provided in Chapters I, II and IV of this report are applicable for the purposes of this chapter (although the information is not broken down by entity), since they are derived from the control and oversight activities of the entities indicated above, in coordination with other entities that have similar powers and capacities.

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

The office of the "Presidential Anticorruption Delegate" is currently examining the mechanisms needed for combating corruption, and the tasks required to strengthen specialized institutions with legal competence for preventing, investigating, prosecuting and punishing illicit deeds 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.*

Bolivian legislation contains a series of provisions to promote organized participation by civil society institutions in various aspects of public management, including those relating to the prevention of corruption. In this respect, preventive legislation establishes powers of oversight and supervision to ensure the proper and adequate management of government administration. The most important legislative provisions are the following:

1. Law 1551 of April 20, 1994 (Popular Participation Law) regulates and consolidates the process of popular participation, incorporating and articulating rural, indigenous and urban communities into the country's economic and social management, in order to achieve a fairer distribution and better management of public resources.

This law provides for "Local Grassroots Organizations" as the key participants. These are defined as rural, indigenous and neighborhood groupings with the power and right to propose, inspect and oversee the performance of works and the provision of public services, and to obtain information

on the use and destination of "popular participation" resources. As well, this legal provision establishes the Oversight Committees as the link between the local organizations and municipal governments for the exercise of oversight and control in the context of Law 1551. It also establishes and classifies government revenues, their form of distribution, and their form of management.

This power to oversee resources represents a natural control over possible cases of corruption that are channeled through the competent jurisdictional authorities, in the context of criminal legislation or through specific complaints under the SAFCO Law and its regulations.

2. At the departmental level, there are Departmental Councils established by law 1654 of July 28, 1995 (Administrative Decentralization Law) that have various powers of control, oversight and promotion of citizen participation. Those councils consist of departmental councilors appointed by the provincial municipal councils, elected by civil society, by virtue of their personal suitability and capacity.

3. Another important provision is Law 2235 of July 21, 2001 (the National Dialogue Law 2000) which establishes guidelines for the poverty reduction strategy, regulating the structures and powers of the institutions responsible for its execution. As well, it defines rules for the distribution of resources from multilateral debt relief and procedures for the compensation policy that determines the transfer of resources from the government and the prefectures to the municipalities.

It also establishes social control mechanisms over poverty reduction programs and strategies. In this respect, social control applied at the various levels (municipal, departmental and national) is conceived as "the right of civil society organizations and societies to inspect, oversee and evaluate the results and impact of public policies".

The national social control mechanism has the power to bring complaints before Congress and the Comptroller General's office and other competent bodies relating to irregularities in the management and administration of funds in entities of the public administration.

As well, the social control mechanisms (national or departmental) have the power to appoint so-called "social trustees" (*síndicos sociales*), who are authorized among other things to participate (with voice but without vote) in meetings of government bodies responsible for managing and administering funds under the Dialogue Law, and overseeing proper application of public contracting procedures. They also have the power to demand information and to issue recommendations on development plans, programs and projects in their corresponding field (national, departmental or municipal).

An important aspect to mention is that this law institutes the "National Dialogue" as a mechanism for building consensus on public policies for economic, social and institutional development, and as a mechanism of information on the design and execution of public policies.

4. Supreme Decree 26564 of April 2, 2002 regulates the procedures, mechanisms and bodies of the national and departmental social control mechanisms established by the National Dialogue Law 2000, as well as the oversight committees established by the Municipalities Law. That decree establishes the scope of social control and the powers of the control mechanisms (bodies representing organizations and institutions of civil society) at the different levels. As well, it establishes their power to oversee and evaluate the results and impact of public policies, and establishes the right to information pertinent to the specific level of social control.

At the municipal level, that legal instrument establishes the Economic and Social Development Council as the social control body constituted by civil society organizations and institutions of the municipality, the main powers of which are to present initiatives and demands for works and services for their municipalities, and to provide technical support to the oversight committees so that they can exercise their social control duties.

5. Law 2028 of October 28, 1999 (Municipalities Law) regulates the municipal regime, which embraces the organization and powers of the municipality and municipal government; national standards governing national property and the public domain; and social control at the municipal government level.

Municipal governance and administration is conducted through the municipal government. The municipality is an autonomous entity under Public Law with its own juridical personality and financial resources. Citizen participation is exercised in the following ways:

- Supervision of municipal government management falls to the municipal Council, which has the power of censure ("Constructive Vote of Censure") as a mechanism for evaluating municipal management.
- Participatory planning, regulated by Supreme Resolution 216961 of March 14, 1997, which establishes procedures, operating mechanisms, technical and administrative definitions and the institutional framework for the planning process. It involves citizen participation in the programming of annual operations and municipal budgets.
- Social control, constituted by the Oversight Committee, the powers and competencies of which are regulated by Article 146 and ff., taken together with Law 1551 on popular participation. Supreme Decree 26130 of March 30, 2001 provides for the required transfer of resources.

6. The Presidential Anticorruption Delegate, pursuant to Supreme Resolution 222070, is in the process of organizing and implementing the Citizens' Anticorruption Networks, which are bodies for dialogue, coordination and joint programming with various civil society organizations and individuals. Those networks are designed for exchanging experience, pooling efforts, and establishing joint activities for channeling civil society support to the Presidential Anticorruption Delegate in the anticorruption effort. They are also supposed to involve and sensitize the public in this campaign and to strengthen the capacity to foster partnerships and coordination among public and private players. Three types of Citizens' Anticorruption Networks are planned: geographic, thematic, and sectoral.

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

The results obtained in terms of civil society participation are reflected essentially in the establishment and operation of the organizations stipulated by legislation. Legal recognition has been obtained for 314 oversight committees, representing each municipality in the country, and a National Confederation of Oversight Committees has been created.

In addition, more than 18,000 "local grassroots organizations" (OTB) have been recognized.

Of these 18,000 recognized OTBs, 2% pertain to indigenous towns or communities, 73% to rural communities, and 25% to urban neighborhoods in various cities of Bolivia, all of which are now

exercising their oversight and control powers over the municipalities, which are the entities that handle popular participation resources.

A number of steps have been taken to secure public representation in light of the above-mentioned legislation. While no statistics are available, they can be said to constitute an effective mechanism for controlling corruption:

- "Constructive Vote of Censure" (dismissal of a mayor for doubtful municipal management).
- Freezing of fiscal accounts (after a complaint of corruption presented by the oversight committee and processed by the Ministry of Finance and the National Senate).
- Suspension of mayors' signing powers (because of complaints of corruption and conflicts of interest).
- Legal proceedings on grounds of public service responsibilities determined by the Comptroller General's office.

In connection with the organization of citizens' anticorruption networks, 15 workshops have been held, with participation by 1091 citizens, and 440 groups are now sponsoring local citizens' anticorruption networks, in which women account for 33% of members, and indigenous people for 12.3%. In terms of the participation of civil society organizations, 36% are active in rural areas.

Currently, the Presidential Anticorruption Delegate is finalizing the Manual on Citizens' Anticorruption Networks.

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.

Currently, the Presidential Anticorruption Delegate is examining the mechanisms required for combating corruption, and for systems that will increase participation by civil society institutions and individuals.

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.

Bolivian legislation provides for regular and ready access by any person to public information. In addition to the legal provisions governing access to private information, as in the case of: (i) financial information subject to the General Banking Law³² (Articles 86, 87, 88, 89 and 90), (ii) regulatory information (relating to businesses regulated by the various superintendencies) covered by specific legislation and Supreme Degree 27172 of September 15, 2003 (Article 22, 23 and 24), (iii) information on the environment (Article 24, 25 and 26) covered by Supreme Degree 24176 of

³² Supreme Degree 26581 of April 3, 2002, consolidated text of Law 1488 of April 14, 1992.

December 8, 1995 (Regulations to the Environment Law) and (iv) other special sectors, there is specific legislation relating to public access to information. That legislation includes:

Law 2341 of April 23, 2002 (Administrative Procedures Law) which governs the relationship between the State and the citizens (all users of government services), regulating the activity and the administrative procedures that the government must follow, in observance of certain general principles, including those of legality, due process, good faith and publicity. Article 18 of this instrument (Access to Archives and Records and Delivery of Certificates), taken together with Article 16 (j) (Individual Rights), provides for public access to information (written, graphic, imagery etc.) held by the government, information that must be delivered unless it is subject to a specific legal restriction.

An essential legal instrument is Supreme Degree 27329 of January 31, 2004, which is intended to secure transparency and regulate access to specific government information, such as the budget, terms of reference for personnel contracts, objectives and goals of the Annual Operating Programs, budget execution reports, and annual procurement plans. That legislation requires all public entities to publish this information (by the Web or any other means) and entitles any person, public or private, to request that specific information.

Article 5 of the regulations approved by Supreme Degree 23318-A of November 3, 1992 (Regulations to the SAFCO Law) impose the principle of transparency in 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 demonstrates a legitimate interest. It also provides that any limitation or reservation on transparency must be specific to each class of information, rather than general, and must be expressly provided for by law.

Supreme Degree 26564 also provides (Article 4) that the authorities, in cooperation with the Social Control Mechanisms, must establish technical and administrative procedures and time limits to guarantee access to information required by those mechanisms in the exercise of their powers under the National Dialogue Law.

Supreme Degree 26449 of December 18, 2001 (Government Procurement Information System, SICOES) requires all State entities to submit information on their contracting of goods and services to the Government Procurement Information System. That information is public and is available through the government tendering web page of the Official Gazette.

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

While there are no statistical data on application of the provisions discussed above, the main public institutions, i.e. ministries, departmental prefectures, the major municipalities, superintendencies, the Comptroller General's office, the Central Bank, national customs, the revenue office, the Congress and the main bodies of the judicial branch, have web pages that provide public access to general information with no restrictions of any kind.

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.

The mechanisms provided for in the instruments discussed under sections 1. and 1b of this chapter allow public servants to consult civil society for purposes of preventing, detecting, punishing and eradicating public corruption. Such consultation takes place through civil institutions (Social Control Mechanisms, Social Trustees, Oversight Committees, and Local Grassroots Bodies) stipulated in the legislation.

The National Dialogue Law (Article 5), taken together with Supreme Decree 26564, provides that the operation of the social control system at its various levels (national, departmental and municipal) implies developing processes of coordination, communication, negotiation, information, monitoring and evaluation, together with State bodies and institutions. For example, in the context of social control by the departmental oversight mechanisms and oversight committees in the departments and municipalities, the departmental and municipal councils must take account of opinions issued by the departmental oversight mechanisms and the oversight committees in various areas of management (Articles 7 and 30).

As well, the departmental oversight mechanisms and oversight committees have the legal power (Articles 33 and 41) to lay charges and bring legal action against public servants who fail to initiate legal action as required by law.

A point of particular interest is Law 1333 of April 27, 1992 (Environment Law), which explicitly provides that any person has the right to take initiatives and to lay petitions before the competent environmental authority, and to receive information on environmental protection questions, as well as the right to participate in environmental management and the duty to intervene actively in the community for the defense and conservation of the environment.

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

There is no specific statistical information available for measuring results on this point.

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.

An important mechanism for participation by civil society in the process of adopting policies and decisions is the referendum³³ that was recently incorporated into the Constitution, by means of a constitutional amendment approved by Law 2631 of February 20, 2004.

The legal mechanisms and provisions (Popular Participation Law and Regulations, Municipalities Law, National Dialogue Law and Regulations, Environment Law) indicated in sections 1a, 1b and

³³ While there is as yet no legislation regulating the operations of the referendum, in concept it is illegal measure through which the public can express an opinion on any policy or decision to be implemented by the government.

1c of this chapter are applicable and are designed to facilitate, promote and ensure active participation by civil society in the process of adopting policies and public decisions, in order to achieve the purposes of preventing, detecting, punishing and eradicating public corruption.

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

There is no specific statistical information available for measuring results on this point.

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.

The legal mechanisms and provisions (Popular Participation Law and Regulations, Municipalities Law, National Dialogue Law and Regulations, Environment Law) indicated in sections 1a, 1b and 1c of this chapter are applicable and are designed to allow civil society to monitor public management.

In addition, Supreme Decree 26255 of July 20, 2001 ratifies creation of the System of Monitoring and Evaluation of Public Management by Results as an instrument for monitoring and evaluating performance contracts, and requiring entities to produce timely, usable and transparent information on their performance in order to promote and verify management by results.

That decree requires each entity to program activities, goals and expected results for evaluation and verification by the Ministry of the Presidency, through the General Directorate of Public Management, the highest level of evaluation within the executive branch.

That decree requires that the evaluation of the fulfillment of contractual goals and results must include an in-house review of information, verifying outcomes, and consulting beneficiaries, users or persons affected, in order to determine the degree of compliance and efficiency achieved. On the basis of these evaluations, the competent authority (in this case the Ministry of the Presidency) may make recommendations to improve management and outcomes.

One other point to be mentioned is that the decree provides that the above-mentioned performance contract signed by the senior executive authorities with the President of the Republic must be published at the beginning of the fiscal year, and at the end, in order to verify results

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

There is no specific statistical information available for measuring results on this point.

CHAPTER FIVE

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.*

Various provisions in Bolivian legislation establish mechanisms for assisting other states that seek assistance in the investigation and prosecution of acts of corruption.

Title V of Law 1970 of March 25, 1999 (Code of Criminal Procedures) contains specific provisions for international judicial and administrative cooperation. Specifically, Article 138 provided that "the maximum assistance possible will be provided in response to requests from foreign authorities, provided they are consistent with the Constitution, and with valid international conventions and treaties and with the provisions of this code." That Article also stipulates that a request for cooperation must be made through the Ministry of Foreign Affairs, which will then bring it to the attention of the competent authority.

That provision also establishes the requirements for requesting assistance, and the specific grounds for refusal or suspension of cooperation (CPP Articles 139 and 140).³⁴ As well, it provides other regulations relating to processing (CPP Articles 141-144), and determines the legal form (*Exhorto*, petition) for requesting a foreign authority or judge to perform an act or investigation. The form of processing the petition must be consistent with the corresponding international conventions and treaties.

An important aspect here is the provision of CPP Article 148 on the power of the Public Prosecutor to coordinate investigations with international agencies or other countries, under joint investigation agreements, which must be approved by the Prosecutor General.

In addition to the provision of cooperation and assistance, the Code of Criminal Procedures also regulates extradition, which is handled in accordance with relevant international treaties or conventions³⁵, and in a subsidiary manner by the provisions of that legislation. That instrument regulates the cases where extradition does or does not apply, the competent body for deciding extradition, the mechanisms for processing, and certain other conditions and special features

³⁴ Article 139 (Requirements). The request for application shall contain:

1. The identity of the requesting authority.
2. The purpose of the request and a brief explanation of the assistance requested
3. A description of the facts under investigation, the crime involved, and the official text of the law.
4. An indication of the time within which a request is required.
5. Any other information needed to fulfill the request.

The request and the documents submitted must be translated into Spanish. The judge may request additional information.

Article 140 (refusal or suspension of assistance). Assistance will be refused when:

1. The request violates the rights and guarantees provided in the Constitution, in valid international conventions and treaties, in this code, and in the laws of the Republic.
2. The request relates to facts that are under investigation or processing in the Republic or the person has been convicted of the crime for which cooperation is requested.

The judge may suspend cooperation in cases where immediate execution would prejudice an ongoing investigation or proceeding in the Republic.

Any refusal or suspension of cooperation must be justified.

³⁵ One of the most important extradition treaties is the one signed between the governments of Bolivia and the United States, which accepts the extradition of nationals for crimes of corruption and fraud against the State.

(CPP Articles 149 to 159). As well, Article 3 of Law 1768 of March 11, 1997 (Criminal Code) regulates the issue of extradition in a manner consistent with the provisions of the Code of Criminal Procedures.

On this same point, Law 1455 of February 18, 1993 (Law of Judicial Organization) gives the Supreme Court the power to consider extradition proceedings requested by foreign governments or tribunals (LOJ Article 55 (22)). It should be noted that in this case a lower body specifically commissioned by the Supreme Court is responsible for compiling and substantiating evidence.

Another legal provision relating to assistance is Law 2175 of February 13, 2001 (Attorney General's Office Law) which gives the Attorney General's Office the power to provide international judicial cooperation in accordance with laws (e.g. Code of Criminal Procedures) and international treaties and conventions.

In the area of cooperation and assistance, Supreme Degree 24771 of July 31, 1997 empowers the Financial Investigations Unit to coordinate, promote and execute programs of cooperation with similar international agencies for the exchange of information, in accordance with signed agreements.

With respect to the conventions against corruption, Bolivia signed the Inter-American Convention against Corruption, sponsored by the OAS, in Caracas on March 29, 1996, and it was approved and ratified as Law 1743 of January 17, 1997.

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.

There is no registry of requests for technical assistance received from or delivered to other states parties. However, in fiscal year 2001 the Supreme Court received a total of seven extradition requests (four of which were allowed), four from Argentina, two from Spain, and one from Chile. Only one of those requests referred to crimes of corruption (violation of duties, abuse of authority).

In fiscal year 2002 the Supreme Court received a total of five requests for extradition (two of which were allowed), three from Argentina, one from Brazil, and one from Italy. None of those requests dealt with crimes of corruption.

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

Not applicable.

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.

In the area of technical cooperation, Bolivia has established agreements and contacts to set up a network for exchanging experience in various matters of national interest. An interesting experiment in the area of corruption is the Inter-Institutional Agreement on Reciprocal Assistance signed between the Institutional Reform Program (Bolivia) and the Anticorruption Office of the Government of Argentina.

That agreement reflects the intention of the parties to established channels of information in various aspects relating to corruption, including:

- Mechanisms for transparency in evaluating public management, administration of economic and financial assistance, and access to information.
- Advisory services and training for improving oversight systems in various areas (public administration, private sector, NGOs, citizen participation, etc.).
- Procedures and rules for identifying conflicts of interest, sworn declarations, standards of conduct, etc.
- Evaluations of institutional development, etc.

The agreement calls for implementation and coordination with other government agencies through the Director of the PRI, representing Bolivia, and the Administrative Comptroller of the Anticorruption Office, representing Argentina.

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.

There are no records on this point.

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

We have no definitive response to this question.

d. Has your county 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.

Some technical cooperation programs on aspects referred to in the Convention have been developed. One of the most important has been the National Integrity Plan. That plan consists of three essential components: (i) judicial reform, (ii) modernization of the State, and (iii) combating corruption, in an effort to plan and develop actions to combat corruption under each of the components identified.

The judicial reform component focuses on resolving structural aspects of justice that have impeded efficient development of the judicial system, and also on updating or creating the necessary legal basis for establishing streamlined and transparent judicial procedures.

The component on modernization of the State is intended to improve systems of government administration and control, and to reinforce results-based management under the principle of accountability. The objectives of this component are also intended to institute a rational system of human resource management in the public administration.

The anticorruption component is designed to establish concrete, short-term measures for attacking corruption, and to create mechanisms for enforcing existing rules.

For purposes of illustration, following are the essential features of each component in the National Integrity Plan:

B.1. JUDICIAL REFORM

Bring into operation the Judiciary's new Independent Constitutional Bodies: (i) Constitutional Tribunal, (ii) Judicial Council

Modernize and update legislation: (i) The Constitutional Laws of the Legislature, the Judiciary and the Attorney General's Office; (ii) Codes governing commercial, civil, family and criminal law; Code of Criminal Procedures; (iii) Administrative Procedures and Administrative Disputes Process Law; (iv) Traditional and/or Community Justice Law; the Arbitration and Conciliation Law; the Bail Law and the Property Guarantees Law; (v) Coercive Fiscal Prosecutions Law; (vi) laws on the Trial of High Dignitaries of State, and the Trial of Supreme Court Judges, Constitutional Tribunal Magistrates and Members of the Judicial Council.

Strengthen the institutions linked to justice administration: (i) Judicial career structure; (ii) administrative, financial and control systems for the Judicial Council; (iii) training programs for Judges and administrative staff; (iv) Attorney General's Office; (v) Public Defense and Human Rights offices.

Institutional Reform of the National Police: (i) education and training programs for police officers; (ii) the sign and implementation of a Citizen Security Plan; (iii) institutional and administrative reform.

B.2. MODERNIZATION OF THE STATE

Promote Results-Oriented Public Management: (i) establish mechanisms for public management by results; (ii) forms of evaluation and oversight.

Introduce the Civil Service Program on a wide scale: (i) Civil Service Statute; (ii) Basic Standards of Personnel Administration; (iii) Institutional Reform Agreements.

Support the modernization of Congress: (i) General Regulations for the Senate; (ii) Design of a Legislative Research and Advice System; (iii) Career Structure for Civil Servants and Congressional Constitution Law; (iv) information system.

B.3. THE FIGHT AGAINST CORRUPTION

Bring into force the normative framework for the Fight Against Corruption: (i) Inter-American Convention against Corruption.

Approve the Civil Service Statute and the Code of Ethics for public servants

Implement an Assets and Income Declaration System for public officials

Strengthen the mechanisms for reporting, investigating and prosecuting cases of corruption: (i) Public Defender's Office; (ii) Comptroller General's Office; (iii) Create a State Prosecutor's Office; (vi) introduce forensic auditing programs; (v) creation of a Specialized Administrative Prosecutions Office.

Transparency in Government Procurement: (i) Establish Basic Norms for the Contracting of Goods and Services that are more transparent and efficient.

Modernize the public sector's tax collection systems: (i) Provide structural solutions to the administrative deficiencies; (ii) Institutionalization, Administrative Career, and Modernization of Customs and Internal Revenue; (iii) make tax evasion a crime.

Establish a program to simplify procedures and reduce bureaucracy: (i) Introduce the "principle of good faith" in public procedures and records; (ii) apply the principle of "Positive Administrative Silence"; (iii) Oblige all public offices to provide client service windows; (iv) Create a Bureaucratic Procedures Simplification Office.

Undertake a citizen education and awareness-raising campaign: (i) design and execution of a mass education campaign.

At the present time there is no definitive evaluation of the objectives achieved through application of this plan.

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?

The Republic of Bolivia has designated the Presidential Anticorruption Delegate as the central authority for purposes of the Inter-American Convention against Corruption.

b. Has your country designated a central authority for the purposes of channeling requests for mutual technical cooperation as provided under the Convention?

The Republic of Bolivia has designated the Presidential Anticorruption Delegate as the central authority for purposes of channeling requests for mutual technical cooperation under the Inter-American Convention against Corruption.

2. Operation of Central Authorities

- a. *Does the central authority have the necessary human, financial and technical resources to enable it to properly make and receive requests for assistance and cooperation under the Convention? If yes, please describe them briefly.*

The National Treasurer allocates the required funding to the Presidential Delegate.

- b. *Has the central authority, since its designation, made or received requests for assistance and cooperation under the Convention? If so, indicate the results obtained, whether there were obstacles or difficulties in handling the requests, and how this problem could be solved.*

There have been no requests for assistance and cooperation with respect to the Convention.

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

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