

**REPORT OF THE REPUBLIC OF PARAGUAY ON THE PROVISIONS  
OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION  
SELECTED FOR REVIEW IN THE FIRST ROUND**

**INTER-INSTITUTIONAL TECHNICAL COMMITTEE IN SUPPORT OF  
IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION  
AGAINST CORRUPTION (CITAIC) IN PARAGUAY.<sup>1</sup>**

<b>INSTITUTIONS THAT COMPRISE CITAIC</b>
<ul style="list-style-type: none"><li>• Council for Promotion of the National Probity System (CISNI in Spanish)</li></ul>
<ul style="list-style-type: none"><li>• Ministry of Finance (MH in Spanish). The Department of Government Contracting took part in this round.</li></ul>
<ul style="list-style-type: none"><li>• Ministry of Justice and Labor (MJT in Spanish)</li></ul>
<ul style="list-style-type: none"><li>• Office of the Attorney General (MP in Spanish)</li></ul>
<ul style="list-style-type: none"><li>• Civil Service Secretariat (SFP in Spanish)</li></ul>

**Asunción, Paraguay. July 17, 2006.**

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<sup>1</sup> Created by Executive Order 16.735 of March 2002. Composed of the institutions mentioned on this cover page and coordinated by the Technical Unit of CISNI.

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## INTRODUCTION

The Republic of Paraguay signed the Inter-American Convention against Corruption in 1996, ratified it by Law 977/1996, and deposited its instrument of ratification on January 28, 1997.

In addition, the Republic of Paraguay signed the Declaration on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption on June 4, 2001, on the occasion of the OAS General Assembly held in San Jose, Costa Rica.

This report deals with the review of implementation of the provisions of the Inter-American Convention against Corruption selected for the second round.

This report also contains a specific review on follow-up the recommendations formulated by the Committee of Experts of MESICIC to the Republic of Paraguay in the first round. Those recommendations were adopted at the plenary session of July 18, 2003, held at OAS Headquarters in Washington, D.C., USA.

## I. SUMMARY OF INFORMATION RECEIVED

This document was prepared by the Inter-Institutional Technical Committee in Support of the Implementation of the Convention (CITAIC in Spanish). The report contains the responses to the questionnaire for the second review round on implementation of the Convention, as well as the follow-up on the recommendations formulated to the country in the first round.

To that end, CITAIC received preliminary reports from the government agencies involved in the functions connected with the specific object of the questionnaire for the second round and, following a review of the information available, proceeded to consolidate and systematize it in this document.

Furthermore, in order to prepare the part of the report concerned with follow-up on the recommendations of the Committee of Experts of MESICIC from the first round, CITAIC has reviewed and analyzed the various successive reports submitted earlier for the same purpose and, having compared them with the original recommendations of the Committee of Experts, produced a final report on progress in implementation or current status of those recommendations. This report also includes a section on observations of Transparencia Paraguay on the contents of this document.

Unfortunately, CITAIC has been unable to obtain any statistical data further to those presented in this document because this information, which relates to certain points in the questionnaire for the second round is not available in a systematized format. Doubtless future reports will be accompanied and underpinned by statistical references.

## SECTION ONE

### II. REVIEW OF IMPLEMENTATION OF THE CONVENTION PROVISIONS SELECTED FOR THE SECOND ROUND

In keeping with the indications contained in documents SG/MESICIC/doc.171/06 and SG/MESICIC/doc.173/06 rev. 2, of February 24 and March 31, 2006, respectively, this part examines implementation of the provisions selected in the framework of the second round.

- Accordingly, this section of the report will first address the questions contained in **Chapter 1 of Section I** of the last document mentioned in the preceding paragraph, which concern systems of government hiring and procurement of goods and services (mentioned in Article III (5), of the Inter-American Convention against Corruption)

## 1.1. GOVERNMENT HIRING SYSTEMS

A. As regards the **first question** in Section I, Chapter 1, paragraph 1(a) of the aforementioned document SG/MESICIC/doc.172/06 rev. 2, regarding **the existence of laws and/or measures establishing government hiring systems**, it should be mentioned that Paraguay has rules establishing government hiring systems. Those rules are contained in Law 1626/2000 (Civil Service Law), which applies to all public servants, including municipal officials, but excluding elected officials, ministers and vice ministers in the Executive Branch, members of the diplomatic and consular corps, and military and police personnel in active service, teachers in all state educational institutions, magistrates and judges, the Prosecutor General and prosecutors, and the Inspector General of Public Spending and his or her Deputy.

However, as the Committee of Experts of MESICIC was informed during the first review round, the application of many of the rules provided in the aforementioned law has been suspended based on a number of rulings of the Constitutional Chamber of the Supreme Court of Justice, ordering provisional measures in numerous unconstitutionality suits or actions brought by representatives of government organs, agencies, bodies and entities, as well as by trade union representatives and public servants of those government offices.

In light of the aforementioned judicial situation, the Executive Branch, through the Civil Service Secretariat, has designed and prepared a new draft bill intended to overcome the shortcomings and disputes connected with Law 1626/2000 (Civil Service Law). The approach used to achieve that objective consists of reaching consensus on the scope and application of the new provisions with the key stakeholders from all the sectors affected by the regulations of the law. Accordingly, the Civil Service Secretariat has transmitted the bill in question to the Supreme Court of Justice for consideration, so that it can evaluate it and suggest appropriate corrections to any deficiencies from a constitutional standpoint that the draft bill might contain.

The provisions of the Civil Service Law establishing hiring systems for civil servants are contained in Chapter II (on the administrative career and hiring of public servants), in particular Article 12 and following.

Under Article 13 of the Law, anyone who meets the requirements set forth in that law is entitled to take part, under equal conditions, in the civil servant selection process provided at Article 15.

Article 14 of the Law sets out the requirements to be met by anyone interested in joining the civil service. Those requirements are: a) hold Paraguayan nationality; b) be between 18 and 45 years of age; c) demonstrate compliance with the personal obligations provided in the Constitution and laws; d) be suitable and have the necessary aptitude to hold the position, as ascertained by a selection system established for that purpose; e) enjoy full rights of citizenship; f) present a certificate of no criminal record; and, g) have no record of misconduct in the public office.

For its part, according to Article 15 of the law, the selection system for entry and advancement in the civil service shall be by public competitive examination, defined as a set of technical procedures that shall be based on a weighting system and evaluation of reports, certificates, background, training courses, and exams designed to measure the knowledge, experience and suitability of the candidate, expressed in quantifiable and comparable values. The Civil Service Secretariat has yet to adopt regulations on the selection system provided in this article of the law, for which reason a decree has not yet been passed that establishes rules on announcement of public competitions for selection or of results of such competitions, or on administrative processes to challenge selection systems.

That said, it should be mentioned that despite the absence of such regulations, several state entities have implemented public servant selection systems by means of public competitive examination or straightforward evaluation of curricula vitae, as mentioned hereinbelow. Such systems are usually applied to the selection of directors or department chiefs, not for more junior administrative posts.

In that sense, it should be added that it has been normal to hold such competitions to select directors or experts for programs carried out with international cooperation agency funding and implemented by the Ministry of Finance, the National Council of Science and Technology, the National Animal Health and Quality Service, the Civil Service Secretariat, and the Ministry of Industry and Trade.

The Ministry of Education and Culture has held public competitive examinations to appoint directors, supervisors and teachers in the framework of the new professional selection system applied, while the

Ministry of Public Health and Welfare has held public competitive examinations to appoint professionals to vacant positions for medical residents at public health facilities.

The Office of the Inspector General (CGR in Spanish), for its part, has adopted Resolution 1579/2004, in which it approves the Staff Selection Regulations for the Office of the Inspector General. Said Regulations define policies as regards application, management, induction, development and admission of CGR staff, as well as containing the Staff Selection Procedure Manual, which expressly provides for public competitive examinations to be held to that end.

Furthermore, it should be mentioned that judges and other judicial magistrates are appointed via public competitions provided in Law 296/1994, "Law organizing the operations of the Council of the Judiciary", and in accordance with their respective rules of procedure. Also, in order to strengthen jurisdictional and administrative management, the Department of Human Resources of the Supreme Court of Justice adopted various measures, which are described in the appropriate section below.

### Executive Branch

- The Civil Service Secretariat (SFP in Spanish) prepared procedural guidelines on civil service staff selection processes. In that connection a draft decree has been drawn up that regulates Article 15 of Law 1626/00 (Civil Service Law) on the obligation to hold public competitions for selection for, and promotion in, the civil service (SFP).
- In September 2005, the SFP set up its web site ([www.sfp.gov.py](http://www.sfp.gov.py)), through which the general public and other actors in the public sector can communicate with the Secretariat and obtain relevant information.
- With respect to the draft bill on the Civil Service Career and Government Employees, the final version of the draft bill is ready.

### Judiciary

As mentioned, judges and magistrates in the judicial branch are appointed through competitions held by the Council of the Judiciary in accordance with Law 296/1994, "Law organizing the operations of the Council of the Judiciary," and their respective rules of procedure.

The Supreme Court of Justice has also instituted a number of management policies to lay the foundations for a judicial career. In that connection, in order to strengthen jurisdictional and administrative management, the Department of Human Resources of the Supreme Court of Justice adopted a number of measures, significant among which are the Announcement of an Internal Competition to apply the new Procedure of the System of Selection, Promotion, Advancement, and Transfer of Officials in the Judiciary using the new evaluation instruments developed in accordance with the requirements of each post in contention.

In addition, the Supreme Court of Justice approved the proposed Judicial Career Law. CITAIC has yet to be informed if the document has been submitted to Congress for the requisite processing.

### Office of the Attorney General

Law 1562/00 approved the organizational chart of the Office of the Attorney General, which recognizes the following state prosecutorial officers: assistant prosecutors, prosecutors, court reporters, and prosecutors' assistants. The Law also determines the basic requirements to be met by applicants for said posts (Articles 47 and 48).

Paraguay also adopted Law 2564/05 of April 19, 2005, Article 1 of which provides "... to be an Assistant Prosecutor, candidates must meet the same requirements set forth in the Constitution for the post of Prosecutor General. To be a Prosecutor (*Agente Fiscal*) or State's Attorney (*Procurador Fiscal*), candidates must hold Paraguayan nationality; be at least 30 years old; hold a law degree from a national public or private university or a duly revalidated law degree from a foreign university; have practiced law, held a judgeship in the judiciary, been a court clerk, or a university law school chair for at least five years, either concurrently, separately, or alternately, and have passed the bar exam set by the Council of the Judiciary. **Candidates for the positions of court reporter or prosecutor's assistant must hold Paraguayan nationality; be at least 30 years old; hold a law degree from a national public or private university or a duly revalidated law degree from a foreign university...**"

The appointments to different posts in the Office of the Attorney General from 2003 to 2005 were as follows:

<i>Year</i>	<i>Officials</i>	<i>Prosecutors/ Assistant Prosecutors/ Prosecutor General</i>	<i>Total</i>
2003	239	10	249
2004	213	121	334
2005	240	3	243
Total	<b>692</b>	<b>134</b>	<b>826</b>

**Model Criminal Prosecution Unit:** The model criminal prosecution unit was set up based on the resources available in 2003 in regards to the number and category of officials available, based on the lowest scale of the civil service career path and the functions manual and, in terms of prosecutors, on what experience dictated was the amount of personnel needed. This system was instituted nation wide and the distribution made compulsory, in keeping with the provisions in force, which made it possible to:

1. Establish a standard number and type of officials needed for an equitable distribution.
2. Define and plan staffing needs based on the model.
3. Define and plan the furniture, equipment and machinery needs for all Units in the country.
4. Project the future workload distribution in accordance with the training, experience, and responsibilities of the officials in each Criminal Prosecution Unit.
5. Design a management and job-training needs model based on individual competencies.
6. Project a performance assessment model in accordance with the Functions Manual, training level, and task.

The mechanisms by which officials gain access to the Attorney General's Office are: i) *hiring*, in cases where a staffing need exists but the necessary budget allocation is lacking; this occurs mainly in the administrative area but also, on occasion, in the jurisdictional area; and, ii) *appointment*, in the case of positions provided for in the budget and as the appropriate vacancies arise, whether because new positions are created or because an official retires or is promoted. Upon taking up their duties, both contracted and appointed staff receive copies of the Organic Law, the Internal Regulations, and a Sworn Statement of Assets form, as well as being interviewed by the Director of Human Resources.

The Office of the Attorney General, through the Department of Human Resources, is implementing the prosecutorial career and a candidate selection system that entails an appraisal and evaluation of academic degrees, certificates, training courses, reports, etc; theory and practical examinations designed to measure knowledge, experience, and suitability of candidates; and **psychological and technical aptitude tests**.

In parts of the interior where prosecutor's offices have been created, public radio broadcasts have been used to make vacancy announcement in prosecution units, after which candidates have been selected according to the above-described mechanisms.

The Training Center is the office that trains officials belonging to the institution, giving attention to and promoting ethical values in the performance of duties.

**B.** As regards the **second question** in Section I, Chapter 1, paragraph 1(b) of the aforementioned document SG/MESICIC/doc.172/06 rev. 2, regarding **the objective results obtained, including any available statistical data**, we should mention that the Civil Service Secretariat is still consolidating that statistical data. Therefore, the country will only be able to provide the Committee of Experts of MESICIC with the relevant data in its next follow-up report.

**C.** As to the **third question** in Section I, Chapter 1, paragraph 1(c) of the aforementioned document SG/MESICIC/doc.172/06 rev. 2, regarding the hypothetical nonexistence of **laws and/or measures establishing government hiring systems**, we reiterate some of the explanations provided in response to the earlier questions herein.

Indeed, as mentioned in subsection A of this Section, despite the absence of the necessary regulations governing Article 15 of Law 1626/2000 on hiring systems or processes based on public

competitive examinations, several public sector entities, such as the Supreme Court of Justice, the Office of the Prosecutor General, the Ministry of Finance, the Ministry of Industry and Trade, the Ministry of Education and Culture, the Ministry of Public Health and Welfare, the Civil Service Secretariat, and the Office of the Inspector General, among others, have implemented their own civil servant selection systems based on public competitive examinations or straightforward evaluation of *curricula vitae*, as mentioned below. Such systems are usually used for the selection of directors or department chiefs, not for more junior administrative posts.

### 1.3. GOVERNMENT SYSTEMS FOR PROCUREMENT OF GOODS AND SERVICES

**A.** As regards the **first question** in Section I, Chapter 1, paragraph 2(a) of the aforementioned document SG/MESICIC/doc.172/06 rev. 2, concerned with **the existence of laws and/or measures**, the Paraguayan government system for procurement of goods and services is governed by Law 2051/03 (Law on Government Contracting) and Regulatory Order N° 21909/03

Said laws apply to all state institutions, including departmental and local governments.

The following types of procurement are excluded:

- a) Individual services governed by the Civil Service Law;
- b) Concessions for public works and services and the granting of permits, licenses, or authorizations for the use and exploitation of public property, which shall be governed by the appropriate laws;
- c) Any procurement in performance of international treaties to which the Republic of Paraguay is party and which are financed with funds provided by multilateral lending agencies of which Paraguay is a member. In such cases the agreements contained in the respective instruments shall be observed, without prejudice to the supplementary application of the provisions contained in this law whenever expressly stipulated or whenever a special system of rules is not expressly established;
- d) Any acts, agreements, and contracts subject to this law entered upon by or among agencies, entities, and municipalities. This exception shall not apply when the agency, entity, or municipality with the obligation to deliver or lease goods, provide services, or carry out works does so through a private third party;
- e) Any procurement that involves government lending operations; monetary, financial, and exchange regulation; and financial operations in general; and
- f) Any procurement for conveyance of international or domestic mail.

**i) Procedures:** The aforementioned Law on Government Contracting clearly establishes the existence of four mechanisms to be used in government procurement operations:

- National or International Public Tender (*Licitación Pública Nacional o Internacional*): Tender notices or calls for bids shall be published in at least one newspaper of national circulation for a minimum of three days, as well as in the official gazette. Press notices shall contain the necessary information so that potential bidders can determine if it is in their interest to take part. The decision to advertise the notice or call for bids shall be published in full through the Government Procurement Information System (SICP in Spanish), and shall be made available to any person who requests it.

The deadlines for submission and opening of bids in tenders shall be as follows:

- a) National public tenders: 20 calendar days counted from the date of final publication of the notice; and
  - b) International public tenders: 40 calendar days counted from the date of final publication of the notice.
- Competitive bidding (*Concurso de ofertas*): All the provisions that apply to public tenders also apply to competitive bidding, with the exception of publication of the notice in the press. Furthermore the competition organizers may, as they see fit and depending on the nature of the goods, services, or works, reduce the deadlines mentioned for public tenders by up to 50 percent, provided that the reduction is not designed to limit the number of potential participants or accrue undue advantage to a particular bidder. To that end, at least five participants will be invited directly and the procedure shall be advertised through the Government Procurement Information System (SICP), so that any interested potential bidder who meets the requirements set forth in the terms and conditions can submit their bid under the same conditions as those who were invited.

- Direct Contract: This mechanism is used for procurement operations in amounts not exceeding 2000 times the daily minimum wage. Invitations shall be circulated by a note disseminated through the Contracting Portal. For the contract to be awarded at least three bids must be submitted for analysis.
- Special Direct Contract: Competition organizers may, under liability, hold contracting processes without abiding by the provisions applicable to public tenders for competitive bidding in the following circumstances:
  - ❖ the contract can only be entered upon with a particular person because it refers to works of art, ownership of patents, author's copyright, or other exclusive rights;
  - ❖ natural disasters that endanger or disrupt the social order, economy, public services, health, security, or environment in any area or region of the country;
  - ❖ processes carried out in the interests of national security;
  - ❖ as a result of situations that constitute an act of God or force majeure, in which it is not possible to obtain goods or services, or carry out works through competitive bidding procedures in the time required to deal with the event in question; in such cases the amounts or items shall be limited to what is strictly necessary to address the situation;
  - ❖ when the contract has been rescinded for causes attributable to the provider or contractor who was awarded the tender. In such cases, the contracting party may award the part of the rescinded contract pending performance to the next lowest valid bid, provided that the difference in price with respect to be original winning bid does not exceed 10 percent;
  - ❖ when holding two tenders that have been declared abandoned;
  - ❖ when the procurement or outsourcing of goods is justified for urgent technical reasons or due to an emergency; or,
  - ❖ following appraisal by competent bodies, the procurement of goods, execution of works, or provision of services is accepted in payment to the Paraguayan state, provided that the generally recognized principles set forth in Article 4 of this law are observed.

## **ii) Regulatory Authority**

The Regulatory Authority is the Department of Government Contracting, which is the Central Regulatory and Technical Unit (UCNT) that reports to the Under Secretariat for Financial Administration of the Ministry of Finance.

## **iii) Registration of Government Suppliers:**

Under the relevant laws, the registration of government suppliers is prohibited for the purposes of participation in calls for bids.

Companies that are awarded contracts must register with the IDAP, so as to be eligible to receive payment for their services.

## **iv) Government Contracting Portal:**

Paraguay has a Government Contracting Portal ([www.contratacionesparaguay.gov.py](http://www.contratacionesparaguay.gov.py)) where all procurement processes -from programming through to award- conducted by state institutions are made public. The portal is open to free and unrestricted access by the general public, which ensures greater dissemination and transparency of processes.

The portal also provides information on the Legal Framework, Resolutions, Circulars, Register of Ineligible Persons, Training, Transfer of Resources, and other matters.

## **v. Public Works Contracts.**

### **vi) Contractor selection guidelines:**

One of the general principles established in Law 2051/03 is Economy and Efficiency, which provides that all agencies, entities, and municipalities must undertake to plan and program their contracting requirements in order to satisfy public needs with the necessary **expediency, quality, and cost to**

**assure the best possible conditions for the State of Paraguay**, while abiding by the regulations on rationality, austerity, and budgetary discipline.

Based on those criteria, the law requires that the contract be awarded to the lowest economic bid, provided that it meets the technical conditions set by the contracting institution.

Several selection criteria are provided for contracting consultants or consulting firms: Quality; Quality and Cost; Price, Fixed Budget, Track Record.

### vii. Challenges

The challenge mechanism provided by the Law for the parties involved in the process to challenge the results is that of protest (Art.79 of the Law). Anyone not directly involved can also report irregularities, giving rise to the initiation of ex officio investigations (Art. 82), which, like protests, can lead to the annulment, in full or in part, of the contracting process.

**B.** With respect to **the second question** in Section I, Chapter 1, paragraph 2 (b), of the aforementioned document SG/MESICIC/doc.172/06 rev. 2, concerned with **the objective results obtained, including any available statistical data**, the report at the close of 2005 clearly shows that the bulk of government procurement corresponds to public tenders -both national and international- which account for more than 76% of the total money used.

Accordingly, the entry into force of the Contracting Law has made it possible to leave aside direct contracting, which led to corruption in most cases, in favor of consolidated procurement through tenders, which has brought the State a saving of 25% on average.

#### NUMBER OF PROCESSES AND AMOUNTS AWARDED AND EXECUTED BY MECHANISM (2005)

<i>Mechanism</i>	<i>Number</i>	<i>%</i>	<i>Amounts Executed</i>	<i>%</i>	<i>Amounts Awarded</i>	<i>%</i>
National Public Tenders	1,779	10.17%	732,955,496,135	34.66%	1,354,759,404,768	41.20%
International Public Tenders	106	0.61%	693,286,606,212	32.78%	1,147,563,073,290	34.90%
Competitive Bidding	1,631	9.33%	151,611,349,913	7.17%	161,724,315,154	4.92%
Direct Contracts	11,825	67.63%	166,721,965,318	7.88%	168,653,319,901	5.13%
Special Direct Contracts	2,145	12.27%	370,117,234,685	17.50%	455,187,367,380	13.84%
<b>Totals</b>	<b>17,486</b>	<b>100%</b>	<b>2,114,692,652,263</b>	<b>100%</b>	<b>3,287,887,480,493</b>	<b>100%</b>

As regards penalization of contractors, Law 2051703 provides for their disqualification from contracting with the State following different proceedings instituted by the Legal Department of the UCNT, such as: preliminary hearings, protests, ex officio investigations, and preliminary enquiries. At the date of this report, between May 2004 and June 2006, 29 companies were disqualified. Detailed information can be viewed at the Portal ([www.contratacionesparaguay.gov.py](http://www.contratacionesparaguay.gov.py)) under the section Disqualified.

**C.** As to the **third question** in Section I, Chapter 1, paragraph 2(c) of the aforementioned document SG/MESICIC/doc.172/06 rev. 2, regarding the hypothetical nonexistence of **laws and/or measures** such as those mentioned above, suffice it to say that that question does not apply in the case of the Republic of Paraguay, for reasons already sufficiently explained in the response to the foregoing questions in this respect.

➤ We now turn to the questions contained in **Chapter 2 of Section I** of the aforementioned document SG/MESICIC/doc.172/06 rev. 2, concerning systems for protecting public servants and private citizens who, in good faith, report acts of corruption (Article III (8) of the Inter-American Convention against Corruption).

**A.** As to the **first question** in Section I, Chapter 2(a) of the aforementioned document SG/MESICIC/doc.172/06 rev. 2, on **the existence of laws and/or measures in your country establishing systems for protecting persons who report acts of corruption**, we should point out initially that Paraguay does not have one specific law establishing a system for protecting public servants and private citizens who, in good faith, report acts of corruption.

However, the country does have several different laws with provisions that partially govern various aspects to do with the protection of persons who report misconduct and irregularities connected with public administration and public servants.

- In that connection, we can cite, for instance, **Article 10** of Law **1562/2000 (Organic Law of the Office of the Attorney General)**, which provides that *“the Office of the Attorney General shall protect anyone in danger of injury as a result of collaborating with the administration of justice, in particular in the case of punishable acts linked to organized crime, abuse of office, violation of human rights. To that end, the Office of the Attorney General shall have in place a permanent protection program for witnesses, victims, and its officials...”*

Also in respect of the foregoing, **Article 44** of the above-cited **Law 1562/2000 (Organic Law of the Office of the Attorney General)** provides, *“The Office of the Attorney General shall ensure, in particular, the oversight and prevention of corruption of public servants. For that purpose, it shall form teams of specialized prosecutors with the capacity to coordinate preventive, administrative, and judicial measures, and to carry out criminal investigations. It shall also develop a permanent program of public participation in the control of corruption.”*

- With respect to other measures establishing whistleblower protection systems, the Office of the Attorney General of the Republic of Paraguay **has, this year, created a Witness Protection Department within the structure of the victim and witness assistance center**, and has begun to implement an experience-sharing program with countries such as Chile, Colombia and Spain in the framework of the EUROsocial-justicia Program.
- The Office of the Prosecutor General is carrying out a study with a view to implementing the **whistleblower protection office** within the structure of the Inspectorate General, the office that receives complaints reports and opens administrative investigations of acts committed by public servants in breach of the Organic Law of the Office of the Attorney General, the Internal Regulations, and other internal provisions. The Whistleblower Protection Office (*Oficina de Protección al Denunciante*) shall receive complaints of internal acts of corruption and, should the conduct reported constitute a criminal offence, refer them to the appropriate criminal prosecution unit, without prejudice to the appropriate administrative penalties. To that end, it shall be necessary to provide training to, and raise the awareness of, employees of the Office of the Attorney General so that they might duly report any acts of corruption. Consideration must also be given to mechanisms to protect their identity and to prevent any reprisals against them by the persons reported.
- Mention should also be made of the punishment adopted by the Paraguayan Congress and promulgated by the Executive Branch in **Law 2535/2005 (Law approving the United Nations Convention against Corruption)**, Articles 32 and 33 of which cover protection of witnesses and reporting persons:

**Article 32. Protection of witnesses, experts, and victims.** *“1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them..*

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

*a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;*

b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means...”.

**Article 33. Protection of reporting persons.** “Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention”.

- In that same connection, we should draw attention to the efforts of the Republic of Paraguay to meet its obligations under both international conventions against corruption, through the processing of the **Bill on Protection of Persons Who Report Acts of Corruption** presented by Senator Carlos Filizzola in August 2004, the preamble of which refers expressly to the provision contained in Article III(8) of the Inter-American Convention against Corruption and whose main provisions propose the following:

**Article 1. Purpose.** “This law regulates Article III(8) of the Inter-American Convention against Corruption and protects from any arbitrary or illegal act, decision, or practices, the interests and rights of any person who, in good faith, reports, presents statements, or lodges complaints about an act or acts of corruption to the appropriate authority...”.

**Article 3. Protected person.** “A protected person is deemed to be any physical person who requests the Enforcing Authority to adopt the protective measures provided herein, as a result of having engaged in, engaging in, or having decided to engage in, any of the conducts described in Article 1 herein, and who might be the target of an arbitrary or illegal act, decision, or practice...”.

**Article 6. Enforcing Authority.** “The Enforcing Authority of the instant law shall be the Office of the Ombudsman, which shall intervene to mediate, make recommendations, or act in favor of a protected person in the event that recommendations are formulated to punish those responsible for arbitrary or illegal acts...”.

**Article 8. Protection of identity.** “The Enforcing Authority may take receipt of reports, statements, or complaints of acts of corruption and, at the request of the protected person and subject to the limits imposed by this law, keep secret the identity of the person who reports or submits complaints of an act of corruption...”.

**Article 10. Investigation.** “The Enforcing Authority shall inform the Office of the Inspector General of Public Spending, the Office of the Attorney General, or the competent agency, as appropriate, of the alleged acts of corruption that come to its attention and keep secret the identity of the protected person, for the respective investigation and corroboration of the veracity of such acts...”.

**B.** With respect to the **second question** in Section I, Chapter 2(b) of the aforementioned document SG/MESICIC/doc.172/06 rev. 2, regarding the objective results obtained in relation to systems for protecting persons who report acts of corruption, it should be mentioned that none of the government institutions that make up CITAIC –except for the Office of the Ombudsman, which has provided information on three cases of reports it has received and processed in conjunction with the Office of the Inspector General, as mentioned in the following paragraph– have reported results or statistics in this connection.

**C.** Regarding the **third question** in Section I, Chapter 2 (c) of the aforementioned document SG/MESICIC/doc.172/06 rev. 2, as to whether or not laws and/or measures such as those mentioned in Article III (8) of the Convention exist, we have referred –in the explanations provided in point A above, and notwithstanding the absence of special or specific legislation establishing legal provisions to protect good-faith reporters of acts of corruption– to a number of inter-institutional agreements between public and private sector entities adopted for the purpose of taking concrete steps to implement this aspect mentioned in both the Inter-American Convention against Corruption and the United Nations Convention against Corruption.

- In this regard, with respect to the implementation of other steps or systems designed to institutionalize measures to create, maintain, and strengthen systems to protect public servants and private citizens who, in good faith, report acts of corruption, we should draw attention to the following:

(a) **“Inter-institutional Agreement between the Office of the Inspector General of Public Spending and the Office of the Ombudsman for implementation of the reporting system for acts of public corruption”**, signed on August 25, 2004 by the two institutions. The main clauses of the agreement provide as follows:

**One:** *“The Office of the Ombudsman shall:*

- 1. Install in the Office of the Ombudsman a work team in charge of receipt and processing of reports of corruption lodged by public servants.*
- 2. Keep secret and protect the identity of public servants who lodge complaints.*
- 3. Present the complaints lodged in the name of the Office of the Ombudsman to the Office of the Inspector General of Public Spending. The Ombudsman shall stand as plaintiff in complaints lodged through the Office of the Ombudsman.*
- 4. Provide assistance and protection to any public servants who lodge complaints...”*

**Two:** *“The Office of the Inspector General of Public Spending shall:*

- 1. Received complaints formulated by the Ombudsman.*
- 2. Examine and analyze all complaints presented, as appropriate.*
- 3. Inform the Office of the Ombudsman of the results of the investigations carried out.”*

Regarding the results obtained from the implementation of this agreement, the Office of the Ombudsman reported that, to date, it has only received three complaints, which have been referred to the Office of the Inspector General of Public Spending for examination and analysis. However, the Office of the Ombudsman has received no information on the results of the examinations and investigations carried out, which, presumably, remain ongoing.

(b) The **“Corruption Whistleblower Protection Project”** implemented by the Institute for Comparative Studies in Criminal and Social Sciences of Paraguay (INECIP in Spanish), a non-profit non-governmental organization that receives financial sponsorship from the United States Agency for International Development (USAID), seeks to correct the complacency and apathy of the public and civil servants in order to encourage them to report acts of public corruption.

The program seeks to involve institutions in the creation of protection policies for public corruption whistleblowers as well as installing complaints offices with swift mechanisms so that private citizens and, in particular, public officials can report acts of public corruption without excessive formalities.

Under this program INECIP is currently implementing specific activities with the Public Records Department, a dependency of the Supreme Court of Justice; the Department of Government Contracting, a dependency of the Ministry of Finance; and the Municipality of Ciudad del Este. It is also promoting management models, training, and awareness raising among key players. The program also contains modules related to civil society, which constitutes one of the main guarantees that change will occur.

As of the date of this report, the program had completed strategy validation workshops and training workshops on administrative and criminal investigation techniques, with the following overall results: 30 workshops held; more than 300 public servants trained in administrative and criminal investigation techniques and in direct participation in discussions on protection of whistleblowers based on their roles; more than 20 professionals hired to lead specific training activities; approximately 30 work meetings; and an Open Forum at the International Encounter on Human Rights and Prevention of Corruption held at *Universidad Nacional de Asunción* with more than 200 registered participants.

The program has also updated a web page, implemented a virtual public library, and developed reporting software protected with a data encryption system to safeguard confidentiality.

The project has a monitoring and evaluation mechanism with specific indicators to assess the project's performance on conclusion.

- For its part, the COUNCIL FOR PROMOTION OF THE NATIONAL PROBITY SYSTEM (CISNI), through its Technical Unit, is at present preparing the appropriate institutional tools (draft general regulations) for the Supreme Court of Justice to create an office in the framework of the latter's inter-institutional agreements with CISNI, in order to deal exclusively with matters that have to do with transparency in its institutional affairs and protection of persons who report acts of corruption. It should be clarified that the focus of this "transparency unit" centers on jurisdictional and administrative activities, with the exception of public records, in coordination with the INECIP program.

➤ Next we will turn to the questions contained in **Chapter 3 of Section I** of the aforementioned document SG/MESICIC/doc.172/06 rev. 2, on criminalization of acts of corruption provided for in Article VI (1) of the Inter-American Convention against Corruption).

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

#### 1. CRIMINALIZATION OF ACTS OF CORRUPTION PROVIDED FOR IN ARTICLE VI (1) OF THE CONVENTION.

Article 14(1)(14) of the Paraguayan Criminal Code defines "public servant" as follows: "**a person who performs a public function in accordance with Paraguayan law, whether as an official, an employee of, or a person contracted by the State.**"-

Article VI (1) of the Convention provides that the Convention is applicable to the following acts of corruption:

Section a). The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions.

The above-described conduct is categorized in Articles 300 and 301 of Law 1160/90 (Paraguayan Criminal Code), as follows:

"Article 300.- Solicitation or acceptance of bribes. 1) Any public servant who solicits or accepts a benefit or the promise thereof in exchange for a consideration arising from an act that they have performed or will perform in the course of their official duties, shall be sentenced to up to three years of imprisonment or a fine. 2) Any judge or mediator who solicits or accepts a benefit, or the promise thereof, in exchange for a decision or some other judicial act that they have performed or will perform, shall be sentenced to up to five years of imprisonment or a fine. 3) The attempted commission of such offences shall also be punished.

"Article 301.- Aggravated solicitation or acceptance of bribes. 1) Any public servant who solicits or accepts a benefit or the promise thereof in exchange for an act that they have performed or will perform in the course of their official duties and **that constitutes malfeasance**, shall be sentenced to up to five years of imprisonment. 2) Any judge or mediator who solicits or accepts a benefit, or the promise thereof, in exchange for a decision or some other judicial act that they have performed or will perform and **that constitutes judicial malfeasance**, shall be sentenced to up to 10 years of imprisonment. 3) The attempted commission of such offences shall also be punished. 4) The provisions contained in Article 57 shall also apply to the offences referred to in the foregoing sections."<sup>2</sup>

Under the Criminal Code, **malfeasance** is an aggravating circumstance in the act and, therefore, incurs liability to a higher penalty than that provided for ordinary solicitation or acceptance of bribes, or misconduct.

<sup>2</sup> "Article 57. Financial penalty. 1) Together with a prison sentence of more than two years the judge may order, if expressly provided by law and in accordance with the provisions contained in Article 65, the payment of a sum of money up to a maximum amount set taking into account the wealth of the perpetrator. 2) The appraisal of wealth shall not take into account benefits subject to confiscation. As appropriate, the provisions of Article 92 shall be applied. 3) Where immediate payment is not possible, the provisions contained in Article 93 (2) shall be applied. 4) If a financial penalty is not paid it shall be substituted with a term of imprisonment of between three months and three years. The substitute prison term shall be determined in the sentence."

Section b). The offering or granting, directly or indirectly, to a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions.

The above-described conduct is categorized in Articles 302 and 303 of Law 1160/90 (Paraguayan Criminal Code), as follows:

“Article 302.- Subornation. 1) Any person who offers, promises, or guarantees a benefit to a public servant in exchange for an act that they have performed or will perform in the course of their official duties and that is subject to their discretionary powers, shall be sentenced to up to two years of imprisonment or a fine. 2) Any person who offers, promises or guarantees a benefit to a judge or mediator in exchange for a decision or any other judicial act that they have performed or will perform, shall be sentenced to up to three years of imprisonment or a fine.”

Article 303.- Aggravated subornation. 1) Any person who offers, promises, or guarantees a benefit to a public servant in exchange for an act that they have performed or will perform in the course of their official duties and **that constitutes malfeasance**, shall be sentenced to up to three years of imprisonment. 2) Any person who offers, promises or guarantees a benefit to a judge or mediator in exchange for a decision or any other judicial act that they have performed or will perform, and **that constitutes judicial malfeasance**, shall be sentenced to up to five years of imprisonment. 3) The attempted commission of such offences shall also be punished.”

By the same token, malfeasance is also considered an aggravating circumstance.

Omission in the performance of functions, mentioned in the aforementioned sections a) and b), is covered by Article 304 of the Criminal Code, which states: “Additional provisions: 1) Any omission shall be treated in the same way as an offence committed in the performance of functions in the meaning of the Articles contained in this chapter. 2) Any reward, or the promise thereof, solicited or accepted by a judge from one party without the knowledge of the other party shall be deemed a benefit, in the meaning of the Articles contained in this chapter, as shall any reward offered, promised, or guaranteed by one party without the knowledge of the other.”

In the above-cited categories of crimes, Paraguayan law only uses the term **benefit** without specifying if said benefit must be financial or not, and it covers all the circumstances contained in the aforementioned sections.

As to who must be the recipient of the benefit, while the Convention provides for receipt or acceptance by the public servant on behalf of another person or entity, Paraguayan law does not expressly make such a distinction; it merely states that it must be the person who participates in the crime who receives the benefit or accepts the promise.

Section c). Any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party.

We consider that this section is covered by the above-transcribed Articles 300 and 301 of the Criminal Code.

The aforementioned conduct is also recognized in Law 2523/04 against Illicit Enrichment of Public Servants and Influence Peddling, the pertinent portions of which are transcribed as follows:

“**Article 2.- Scope.** This law shall apply to any person who performs public functions, or has authority over the use, custody, administration, or exploitation of public funds, services, or property, regardless of their title or the form of their election, appointment, or contract, and who commits any of the offences described in this law. **Article 3.- Illicit Enrichment. 1)** Any public servant, as recognized in Article 2, commits the offence of illicit enrichment and shall be sentenced to between one and 10 years of imprisonment when, after taking up their duties, they: **a)** Acquire ownership, possession, or use of goods, rights, or services, the cost of whose purchase, possession, or use exceeds their legitimate economic means and those of their spouse or common-law partner; **b)** After taking up public functions, settle debts or extinguish liabilities that affected their wealth, that of their spouse or common-law partner, or relatives within the second degree of consanguinity and affinity, in

circumstances that exceed their legitimate economic means. 2) The supplementary penalty set forth in Article 57 of the Criminal Code shall also apply to the cases provided in section 1 of this Article. **Article 7.- Influence Peddling.** 1) **Anyone who, on their own behalf or that of a third party, receives or obtains the promise of money or any other benefit as a stimulus or reward to intercede with a public servant in a matter that has been or is to be brought to their consideration, adducing real or invented relations of influence or importance, shall be sentenced to up to three years of imprisonment or a fine.** 2) **The same penalty shall be imposed on anyone who delivers or promises money or any other benefit, in order to secure the favor of a public servant.** 3) **Should the conduct mentioned in sections 1) and 2) of this Article be designed to exercise influence over a magistrate in the judiciary or prosecutors in the Office of the Attorney General, in order to secure the issue, delay, or omission of an opinion, decision, or ruling in matters submitted for their consideration, the maximum legal limit of the penalty shall be increased to five years of imprisonment.** **Article 8.- Administration for personal gain.** 1) Any public servant who decides, authorizes, or signs administrative contracts or acts that directly grant undue benefits to their personal gain, or that of their spouse or common-law partner, or relatives within the second degree of consanguinity or affinity, shall be sentenced to up to 10 years of imprisonment.”

Law 2777/05 against Nepotism in the Civil Service provides at Article 3, “Any appointment that contravenes this provision shall be null and void and **give rise to the presumption of the offence of influence peddling.**”

Finally, in April of this year, Paraguay adopted Law 2880/06 **against crimes against government property.**” This Law is applied to public servants for offences committed in the course of their duties, and also to private individuals who, for whatever reason, have authority over the use, custody, administration, or exploitation of government services or property. The offences classified in the aforementioned law are transcribed as follows:

**“Article 4.- Embezzlement by appropriation.** Any appointed, contracted or elected public servant or employee of any category or rank, who appropriates State property that has been given into their administration, possession or custody by reason of their functions or office, shall be sentenced to five to twelve years of imprisonment. The same penalty shall be imposed on any official who permits, or gives their consent for another person to engage in, the aforementioned conduct in full knowledge of their intentions. If at the time of consummation the value of the appropriated property does not exceed 100 times the legal minimum wage for assorted non-specific activities in the Republic, the official shall be sentenced to up to five years of imprisonment. The attempted commission of such offences shall also be punished. **Article 5.- Embezzlement through unlawful legal transactions.** Any public servant who approves or undertakes a legal transaction that involves State property in their administration or custody, in violation of the legal rules provided for that purpose and to the monetary loss of the State, shall be sentenced to up to five years of imprisonment or a fine. **Article 6.- Embezzlement through misuse.** Any public servant who misuses, or permits the misuse by another, of State property for their own benefit or that of a third party shall be sentenced to a fine. The same penalty shall be imposed on any public servant who makes unlawful use of works or services paid for by the State for their own benefit or that of a third party. **Article 7.- Culpable embezzlement.** Any public servant whose negligence, incompetence, or recklessness causes the loss, damage, theft of, or otherwise results in damage to, State property in their administration or custody, shall be sentenced to up to three years of imprisonment or a fine. **Article 8.- Restoration as grounds to lessen the penalty.** If, before execution of the final judgment is ordered, a public servant who engaged in misuse should correct the misuse, restore what was appropriated or wrongfully invested, or, in general, repairs the damage or injury to State property, the Court may reduce the penalty in accordance with Article 67 of the Criminal Code. The reparation must be comprehensive and include any interest or accessory costs incurred. **Article 9.- Unlawful intervention in government contracting.** Any public servant who intervenes by reason of their office in any act in, or phase of, tenders, concessions, competitions, and contracts; colludes with the interested parties, or uses any other artifice for their illegitimate benefit, and in so doing defrauds the State, shall be sentenced to up to five years of imprisonment.”

Section d). The fraudulent use or concealment of property derived from any other form of omission, attempted commission of, or collaboration or conspiracy to commit, any of the acts referred to in this article.

The provisions in Paraguayan criminal law that most closely match the criminal classification described in the above-cited section are Articles 194, 195 and 196 of the Criminal Code, which are transcribed as follows:

“Article 194.- Obstruction of the restoration of property 1. Anyone who helps a person who has committed an unlawful act in order to ensure their enjoyment of the benefits of said act shall be sentenced to up to five years of imprisonment or a fine. 2. In such cases, the penalty shall not exceed that provided for the act from which the benefits arise. 3. The person liable to punishment for participation in the prior act shall not be punished for obstruction. 4. Anyone who induces a person not involved in the prior act to commit obstruction shall be punished for instigation. 5. Criminal prosecution of the act shall depend on the initiative of the victim or on the appropriate administrative authorization, as the case may be, provided that the principal has participated in the prior act.”

“Article 195.- Receiving stolen property 1. Anyone who, with the intention of obtaining undue monetary gain, receives an object obtained through a crime against alien property, supplies it to a third party, or procures or helps to procure its transfer from one person to another, shall be sentenced to up to five years of imprisonment or a fine. 2. Where appropriate, the provisions of Articles 171 and 172 shall be applied. 3. The attempted commission of such offences shall also be punished. 4. When the principal acts: 1. commercially; 2. as a member of a band formed for the continuous commission of larceny, robbery, or receiving of stolen property, the term of imprisonment may be increased to up to 10 years. Furthermore, the provisions contained in Articles 57 and 94 shall apply.”

“Article 196.- Money laundering 1. Anyone who: 1. conceals an object originating from: a) a felony; b) an offense committed by a member of a criminal organization provided in Article 239; c) an offense mentioned in Articles 37 to 45 of Law 1340/88; or 2. in respect of such an object, disguises its provenance, obstructs or jeopardizes knowledge of its provenance, location, discovery, confiscation, special confiscation, or sequestration, shall be sentenced to up to five years of imprisonment or a fine. 2. The same penalty shall apply to anyone who: 1. obtains an object mentioned in the foregoing clause, or provides it to a third party; or 2. keeps it or uses it for themselves or for another person having known its provenance when they obtained it. 3. The attempted commission of such offences shall also be punished. 4. When the principal acts: 1. commercially; 2. as a member of a band formed for the continuous commission of money laundering, the term of imprisonment may be increased to up to 10 years. Furthermore, the provisions contained in Articles 57 and 94 shall apply. 5. Anyone who, in the cases of sections 1 and 2, and through gross negligence overlooks the provenance of the object of an unlawful act mentioned in section 1(1), shall be sentenced to up to two years of imprisonment or a fine. 6. The act shall not be punishable under clause 2 when the object was first obtained by a third party acting in good faith. 7. The objects mentioned in clauses 1, 2, and 5 shall be assumed as originating from an offense committed outside the scope of this law when the act is criminally punishable in the place of its commission. 8. A person shall not be punished for money laundering when they: 1. Voluntarily provide or bring about the disclosure of information about the act to the competent authority, provided that said act has not been fully or partially discovered and that the principal was aware of that fact; and, 2. In the cases of sections 1 and 2, in the circumstances of the foregoing subsection, facilitate the confiscation of the objects connected with the offense. 9. When the principal, through voluntary disclosure of their knowledge, has contributed considerably to the clarification: 1. of the circumstances of the act that exceed their own contribution thereto; or, 2. of an act mentioned in section 1 unlawfully committed by another, the court may reduce the penalty in accordance with Article 67 or dispense therewith.”

Section e). Participation as a principal, coprincipal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this article.

With respect to commission as principal of and participation in a crime, we should clarify that our criminal code provides for all the forms of participation mentioned in the Convention except for accessory after the fact, on the premise that in modern criminal dogma that is not a form of participation because this conduct occurs after the act has taken place and not during or before its commission. That does not mean that accessories after the fact are not punished, but that the offense is classified as a separate crime: on one hand there is the crime of obstruction of restoration of property (article 194 of the Criminal Code transcribed above) and obstruction of criminal justice, provided in article 292 of the Criminal Code, which says: “1. Anyone who willfully or knowingly prevents another from being convicted of a crime or subjected to a measure for an unlawful act, shall be sentenced to up to three years of imprisonment or a fine. 2. The same penalty shall apply to

anyone who willfully or knowingly prevents the complete or partial execution of a penalty or measure to which another has been sentenced. 3. The penalty shall not exceed that provided for the act committed by the other person. 4. The attempted commission of such offences shall also be punished. 5. A person shall not be punished for obstruction when they commit an act in an attempt not to be sentenced to a punishment or subjected to a measure, or in order to prevent execution of the sentence. 6. A person shall be exempt from punishment when the act is committed on behalf of a relative.”

The other forms of participation in and commission of a crime are recognized in the Criminal Code (Law 1160/97): “Article 29.- **Commission as principal.** 1. Anyone who commits the act or uses another to do so shall be punished as the principal. 2. Any person who acts in concert with another, such that through their contribution they share with the other person control over commission of the act, shall also be punished as the principal. Article 30.- **Instigation.** Anyone who induces another to commit an intentional unlawful act shall be punished as instigator. The penalty shall be that provided for the principal. Article 31.- **Complicity.** Anyone who helps another to commit an intentional unlawful act shall be punished as an accomplice. The penalty shall be that provided for the principal and reduced in accordance with Article 67.”

The attempted commission of a punishable act is punished in cases of misdemeanors when it is expressly categorized as a crime. The precepts connected with attempted commission are:

“Article 26.- **Constitutive acts.** Attempted commission occurs when the principal makes the decision to commit an offense through acts that, bearing in mind their significance for the crime, immediately precede consummation of a legally recognized crime. Article 27.- **Punishability of an attempted crime.** 1. Attempted felonies are punishable; attempted misdemeanors are only punishable in the cases expressly provided by law. 2. The criminal-law frameworks provided for consummated offences are applicable to the attempted commission of crimes. 3. When the principal has still not committed all of the acts that, bearing in mind their significance for the crime, are necessary to bring about their consummation, the penalty shall be reduced in accordance with article 67.”<sup>3</sup> “Article 28.- **Desistance and repentance.** 1. A person shall be exempt from punishment when they voluntarily desist from carrying out a legally recognized crime that has already been initiated, or, the attempted commission having been completed, when they prevent the outcome. If the outcome does not transpire for other reasons, the principal shall also be exempt from punishment provided he or she has made a voluntary and meaningful attempt to prevent it. 2. When several persons participate in the commission of the crime, anyone who voluntarily withdraws a contribution already made and prevents its consummation shall be exempt from punishment. When the crime is not consummated for other reasons, or when the contribution has had no effect on its consummation, anyone who has made a voluntary and meaningful attempt to prevent the crime shall be exempt from punishment.”

Based on the foregoing, it can be said that Paraguayan criminal law recognizes the conducts described in Article VI of the IACC and even provides for aspects not included therein, such as influence peddling, unlawful intervention in government contracting (Law 2880/06), and nepotism (Law 2777/05).

### **Creation of the Specialized Anti-Corruption Unit**

The entry into force of the new code of criminal procedure in our country introduced an adversarial prosecution system, in which the state entity with the duty to prosecute criminal offenses is the Office of the Attorney General, which is in charge of investigating all punishable acts that come to its attention in any of the forms described by law. Furthermore, it may open such investigations on its own initiative should any crime brought to its attention warrant such action.

The Office of the Prosecutor may, in use of its powers, conduct all necessary proceedings to clarify the act under investigation, except those that require judicial authorization in accordance with constitutional guarantees (such as, for example, a raid or the attachment of any objects connected with the case); the Office of the Prosecutor may also order the preventive detention of the suspect, with the obligation to bring them before a court within 24 hours, so that the latter might order their

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<sup>3</sup> In this respect Article 13 of the Criminal Code provides: “**Classification of offences.** 1. A felony is any offense the penalty for which is five or more years of imprisonment. 2. A misdemeanor is any offense the penalty for which is less than five years of imprisonment or a fine. 3. For this classifications of offences only the basic legal framework shall be considered.”

preventive imprisonment in order to ensure that they stand trial, provided the requirements for application of that measure are met.

The Office of the Attorney General ordered the creation of the Specialized Anti-Corruption Unit by resolution 988 of May 30, 2005, and appointed two Prosecution Units. Subsequently, by resolution 2239 of September 30, 2005, the Office of the Attorney General ordered the creation of another Anti-Corruption Prosecution Unit, which took the total number of prosecution units to three. Since 2002 those units have instituted 125 criminal proceedings for acts of corruption, *inter alia*, illicit enrichment, solicitation or acceptance of bribes, offering of bribes, extortion, and influence peddling. Almost 60% of all of those cases – nearly 100% of the cases of illicit enrichment - were initiated ex officio by the Office of the Prosecutor based on different journalistic publications that reported the reputed offenses.

The majority of cases are at the investigation phase; charges have been brought in seven of them. Final briefs have been presented in 12 cases. In two of the cases in which charges have been brought, the accused has been convicted in public oral proceedings. In one case a former prosecutor was convicted in a summary trial for aggravated solicitation of bribes and extortion. In three cases the holding of public oral proceedings are pending and the others are awaiting preliminary hearing.

The greatest problem encountered by the anti-corruption unit is lack of resources to successfully conclude investigations – in particular in cases of illicit enrichment – which, among other things, need expert accounting and financial analysis that must be carried out by specialists in such matters. Another problem is excessive delays in holding preliminary hearings and oral proceedings, which create the risk that the time limit provided in Article 136 of the Code of Criminal Procedure will be reached, allowing the action to lapse. Furthermore, in some cases evidence has been lost from the indictment stage, and the Office of the Prosecutor has lodged the appropriate reports.

## **2. APPLICATION OF THE CONVENTION TO ACTS OF CORRUPTION NOT DESCRIBED THEREIN, IN ACCORDANCE WITH ARTICLE VI (2).**

Our country has not reached an agreement with any other State Party to apply the Convention to any acts of corruption not described therein, in accordance with Article VI (2).

## **SECTION TWO**

### **III. FOLLOW-UP ON THE RECOMMENDATIONS FORMULATED IN THE NATIONAL REPORT IN THE FIRST REVIEW ROUND**

This part follows up on the recommendations that the Committee of Experts of the Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC) made to Paraguay in the framework of the first review round.

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

##### **LEGAL FRAMEWORK**

##### **1.1 Standards of conduct to prevent conflicts of interest and mechanisms to enforce them**

With respect to this provision and, in particular, to the guarantee that the laws on conflicts of interest are in full force and can be extended to all government servants and employees, it should be mentioned that specific regulation in this area is pending since the Civil Service Law (Law 1626), which contains standards on conflict of interests, does not apply to all public posts (President and Vice President of the Republic, Ministers and Vice Ministers in the Executive Branch, Senators and Deputies, Judicial Magistrates, Inspector General of Public Spending, Prosecutor General, and other senior public posts), as was mentioned in the framework of the first review round.

Nevertheless, in terms of progress, it should be mentioned that various Senate advisory committees are studying a bill on Ethics in the Civil Service, which was presented in September 2005, and that the preliminary draft bill on the Civil Service Career and Government Employees also covers aspects relating to prevention of conflict of interests.

Another relevant law that governs this issue is Law 2777 against Nepotism in the Civil Service, which came into force in November 2005. This law prohibits the appointment of any public official who is

related within the fourth degree of consanguinity and the second of affinity to the appointing authority, unless the official is appointed on the basis of a public competitive examination or the position held is that of a private secretary.

One shortcoming that should be mentioned is that while the aforementioned proposed laws contemplate coverage of all public servants, regardless of rank or seniority (we refer to the bills on Public Ethics and the Civil Service Career), nevertheless, those proposed laws do not mention the times at which (before, during and after occupancy of the post) civil servants should be subject to oversight.

In the area of government contracting, Law 2051 contains express prohibitions on prevention of conflicts of interest in connection with government procurement processes, specifically with regard to officials involved in any stage of the contracting process who have personal, family or business ties to the provider or contractor (see Article 40 of the Law).

At the same time, we should draw attention to the following institutional codes of ethics in force:

- The House of Deputies, by resolution 322 of September 9, 2004, has adopted the Code of Ethics of the Honorable House of Deputies of the Nation.
- The Supreme Court of Justice, by resolution 390 of October 18, 2005, has created the Judicial Code of Ethics. The code also provides for a Court of Ethics to consider cases covered by those new rules; that Court is in the process of installation.
- The Office of the Inspector General of Public Spending, by resolution 640/03, adopted the Code of Ethics for Employees of the Office of the Inspector General of Public Spending.
- Various Senate advisory committees are studying a bill on Ethics in the Civil Service, which was presented in September 2005.

## **1.2. Standards of conduct to ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions and enforcement mechanisms**

The following standards and laws on protection of public property are in force:

- Constitution of the Republic of Paraguay, Article 106 of which establishes the principle of liability of public servants and employees.
- Civil Code, Article 1845, which establishes direct and personal liability for illicit acts committed by public servants and employees in the course of their duties.
- Law 1626/2000 "Civil Service Law", Articles 57, 64, 65, 68, 130, and 131.
- Law 1535/1999 "Law on Financial Administration of the State", Articles 82, 83, and 84.
- Law 2880/2006 "LAW AGAINST CRIMES AGAINST PUBLIC PROPERTY." This law specifically governs penalization of crimes against the property of the Paraguayan State and supplements the system of criminal laws with regard to offenses of this type.
- Law 2523 "LAW AGAINST ILLICIT ENRICHMENT AND INFLUENCE PEDDLING."

In this connection, it is also worth mentioning the creation of the Internal Investigation Unit of the Ministry of Finance, created by resolution MH 459 of June 23, 2005, the specific functions of which are:

- To conduct investigations within the Ministry of Finance with a view to identification and bringing charges against corrupt officials.
- To suggest, implement, and monitor operational and organizational measures to create adequate conditions to combat corruption in the Ministry of Finance.

Significant results of the Investigation Unit that we can mention include the following:

In December 2005, the Internal Investigation Unit of the Ministry of Finance (UIIH in Spanish) concluded 12 investigations: 10 of them were for illicit enrichment and were referred to and received by the Office of the Attorney General; and two were administrative investigations (one was a case of illicit enrichment that was jointly investigated by the UIIH, SEPRELAD and the Office of the Attorney General, and resulted in the preventive imprisonment of the official concerned). In January 2006, the UIIH concluded five investigations: four of them were for illicit enrichment and were referred to and received by the Office of the Attorney General; and one was for misappropriation and falsification of public instruments. Furthermore, in February 2006 the UIIH completed one investigation for extortion, misappropriation, and immediate production of false public documents. This investigation concluded with the arrest and subsequent preventive imprisonment of two employees of the Office of the Under-

Secretary for Taxation and Large Taxpayers of Ciudad del Este. The procedure was carried out in full cooperation with the Office of the Attorney General.

As of June 2006, the Unit has presented 38 cases to the Office of the Prosecutor General, as a result of which four public servants have had restrictions placed on their liberty and US\$450,000 in cash have been seized, not to mention additional movable assets.

### **1.3. Standards of conduct and mechanisms concerning measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware**

On this point we refer to Section II of this report on **REVIEW OF IMPLEMENTATION OF THE CONVENTION PROVISIONS SELECTED FOR THE SECOND ROUND**, which responds to the questions on systems for protecting public servants and private citizens who, in good faith, report acts of corruption (Article III (8) of the Inter-American Convention against Corruption).

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

With respect to the system in place for registering income, assets, and liabilities, the country reports that the Constitution and Law 276/1993, "Organic Law of the Office of the Inspector General of Public Spending", (along with Law 1626/2000, "Civil Service Law") govern the obligation for public servants to submit disclosures of assets and income to the Office of the Inspector General of Public Spending. However, one shortcoming that should be mentioned is the absence of a system of penalties for those who fail to comply with the obligation contained in the Constitution.

Furthermore, the rules of procedure on the provisions contained in articles 104 and 283(6) of the Constitution, with regard to sworn declarations of assets and income, only prescribe the minimum information to be furnished (on the printed form that the Office of the Inspector General of Public Spending supplies to individuals required to submit declarations), and there is a conspicuous absence in terms of the detailed expenditures of the declarant. The foregoing makes it impossible to calculate income less (minus) expenditure, in order to determine the declaring public servant's level of savings or investment. Furthermore, there is a lack of regulations on such aspects as evaluation and verification mechanisms, as appropriate, as well as on updated declarations, utilization, publicity, and penalties for non-compliance.

Aside from the foregoing, it should be mentioned that the Office of the Attorney General, by resolution 1968/05, which created the Internal Rules of Procedure of the Office of the Prosecutor General, has made it a rule that failure to present a sworn declaration of assets in the time and manner prescribed by the applicable standards is considered a very serious fault, the penalty for which is removal from office.

As regards the use of sworn statements of net worth to detect and punish illicit acts, in several investigations prosecutors of the Office of the Attorney General have requested the Office of the Inspector General of Public Spending for, and successfully used, the sworn statements of net worth of public servants under criminal investigation to demonstrate the existence of clear evidence of unjustified increases in net worth or illicit enrichment.

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

### **3.1. Strengthen the system of control for the aforementioned selected provisions and their oversight bodies.**

The harmonization of the functions of the Office of the Inspector General of Public Spending and the Second Chamber of the Audit Court, which, since the entry into force of Law 2248/03 only exercises contentious jurisdictional functions (it deals with complaints brought by private citizens against the public administration), has resolved the conflict of jurisdiction that previously existed between the two oversight bodies for public accounts.

While this legal amendment has helped to settle the conflict of jurisdiction that previously existed between the two aforesaid bodies, it should be mentioned, nonetheless, that the modification of the

powers that were originally accorded to said jurisdictional organ has left a legal void in terms of administration of justice on public accounts, insofar as there is at present no specific legal basis for the recovery of unjustified public funds in the manner provided by the standards and rules of procedure in force in that area, given that the Office of the Inspector General of Public Spending (and also the Office of the Attorney General) lacks legal powers to recover such funds.

Furthermore, another measure adopted to strengthen the functions of the Office of the Inspector General of Public Spending in its interaction with the Office of the Attorney General was the enactment of a cooperation agreement between the two institutions, the main objective of which is to develop internal mechanisms to improve the oversight activities of the Office of the Inspector General for discovering evidence of wrongdoing, in order to fulfill its obligation to present well-founded complaints to the criminal prosecution organs.

Furthermore, it should be mentioned that the internal oversight bodies created by Law 1535/1999 "Law on Financial Administration" have been institutionally strengthened. Those oversight bodies comprise the Office of the Auditor General of the Executive Branch, and all the other Offices of Internal Auditors installed in the various public sector bodies and entities. In that connection, at present the system of internal oversight of public accounts and management is composed of the Office of the Auditor General in the executive branch, which, whose 22 officials coordinate the activities of all the other oversight agencies; the system also comprises more than 80 offices of internal auditors in the same number of centralized and decentralized public entities subject to oversight, including the legislative branch, the judiciary, departmental governments, autarchic and autonomous entities, and State-owned enterprises under the supervision of some 800 technical officials and auditors.

#### **4. MECHANISMS TO ENCOURAGE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11 OF THE CONVENTION)**

##### *4.1 Mechanisms for access to information*

Despite the constitutional guarantee provided in Article 28 of the Constitution, which recognizes the right to be informed and that public sources of information are freely accessible for all, a law is necessary to govern the modalities, time limits, and appropriate penalties with regard to said sources, in order to ensure full observance of this right.

In that connection, it is considered a setback that the Senate should have completely rejected the Bill on Access to Public Information approved by the House of Deputies in December 2005. That rejection, in accordance with the requisite legislative procedures, implies the risk of not having the aforementioned law in place, which would delay the possibility of implementing the other recommendations in this area.

The foregoing notwithstanding, one recommendable alternative is for the authorities to adopt the appropriate administrative resolutions to establish systems to public access, as appropriate, to information of public interest.

##### *4.2 Mechanisms for consultation*

A significant stride in this area is that in 2004 the Paraguayan Congress adopted methodological guidelines for holding congressional public hearings as a parliamentary consultation mechanism. In this connection, public hearings have been held on laws of high public interest, such as the Law on Access to Public Information and the Law on Compulsory Membership of Professional Organizations, for which regulations have not yet been adopted in Paraguay.

We should also mention the creation of several public assistance offices, *inter alia*, the Complaints and Suggestions Office of the Ministry of Finance, complaints offices at district prosecutors offices, and the Judicial Information and Complaints Desk.

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

Progress that can be mentioned in the area of creation of mechanisms to encourage participation in the follow-up of public administration includes the increase in the number of web sites of public institution. As regards specific areas, mention should be made of progress in the area of public

contracting through the publication of calls for bids, awards, and disqualified companies on the government contracting portal, as well as the initiative to equip municipalities with Internet rooms on contracting to enhance connectivity and consultation capacity. Other progress includes the publication of information on tax revenue collected by the Ministry of Finance and the Customs Bureau, as well as information on the times and amounts of royalties transferred at local government level.

In addition, the social spending monitoring program implemented by the UNDP with the support of the Ministry of Finance has made it possible to have real-time information on budget allocation and execution in areas of high public interest. Initiatives of this type have been favorable for follow-up of public administration.

One incipient experience for encouraging participation in the follow-up of public administration and the implementation of citizen interaction systems designed to facilitate access to public information and develop systematic accountability mechanisms, has been the creation of Citizen Participation and Transparency Units within public institutions. We refer the reader to the experience of the Ministry of Finance in view of the progress it has made in that respect.

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

- As was mentioned in the report for the period from August 2004 to February 2005, the Office of the Attorney General has a Directorate of International Affairs and Foreign Legal Assistance (DAIAJE in Spanish), which is responsible for the management of the tasks performed by the Central Authority. In 2004, the Office of the Attorney General (Office of the Prosecutor General) of the Republic of Paraguay was included in the OAS Secure E-Mail Project (Virtual Office Groove System), as well as in the development of a computerized data system between the Supreme Court of Justice, the Ministry of Foreign Affairs, and the Office of the Attorney General for follow-up and registration of letters rogatory received and sent. In this connection, the appropriate procedures have been coordinated with the Department of Legal Affairs of the Ministry of Foreign Affairs to implement an expeditious mechanism, so that all letters rogatory in the framework of the Inter-American Convention against Corruption are immediately forwarded without further ado to the Office of the Attorney General for the requisite processing.
- Also significant is the signing of the Memorandum of Understanding to initiate a technical cooperation project implemented by the General Secretariat of the OAS with support provided by the Canadian International Development Agency (CIDA), in order to assist Paraguay with implementation of the recommendations made to it by the Committee of Experts of MESICIC on the provisions of the Inter-American Convention against Corruption selected for the first review round.

Other significant activities that can be mentioned are:

- Creation of four more accounts (users) in the Secure E-Mail Project (Virtual Office Groove System) of the OAS for members of the Directorate of International Affairs and Foreign Legal Assistance, which brings the total number of users to date to six. The aim of the foregoing is to enhance communication capacity with other IACC Central Authorities, which would have a positive impact on processing of letters rogatory in the framework of the Convention
- "Training Course on International Legal Cooperation and Extradition," for prosecutors and officials of the Office of the Attorney General, held on June 3 and 4, 2006, with the collaboration of the Training Center of the Office of the Attorney General, as well as the United States DOJ and OPDAT.
- Participation in the "Training Workshop on Extradition" which was held on June 29 and 30, 2006, in Mexico City, and organized by the Office of the Prosecutor General of the Republic in the REMJA/OAS framework.
- Appointment of a Prosecutor's Assistant in charge of the Central Authority Department, as a new position in the organizational structure of the Directorate of International Affairs and Foreign Legal Assistance and of the Office of the Attorney General. The prosecutor's assistant will be in charge of processing, follow-up, and channeling of all requests for international legal assistance received and sent in the framework of the IACC and other international instruments for which the Office of the Attorney General is the central authority. In the interests of performance, this officer has a desk, chair, computer, printer, Internet connection, and groove system.

- Distribution in the Office of the Attorney General of Circular 2 of November 7, 2005, in which the Prosecutor General reminds all criminal prosecutors in the Republic of the force and effect of the IACC and of the functions of the Office of the Attorney General as the Central Authority (MP / DAIAJE)<sup>4</sup>.
- Program: "The Inter-American Convention against Corruption (IACC): Application Tools". This training workshop, which was intended particularly for financial crime and anti-corruption prosecutors, was initiated on November 24 and 25, 2005. The program developed themes such as: structure of the IACC; international legal cooperation in criminal matters and extradition, among others. The workshop was jointly organized by CISNI and the Office of the Attorney General, and was held at the training center of the latter institution (MP / DAIAJE). The second module of the workshop continued in March 2006 and is scheduled to conclude in the second half of the year.
- Inclusion and active participation in the coordination meetings of the Inter-Institutional Technical Committee in Support of the Implementation of the Conventions against Corruption (CITAIC) (MP / DAIAJE).
- Management as Central Authority (Art. 18 IACC) of letters rogatory and requests formulated by domestic judicial authorities or the Office of the Attorney General. In this connection, mention should be made of an instance of legal cooperation on a criminal matter with the United Mexican States, which has already been answered and forwarded to the requesting authority, making this the first concrete case of utilization of the IACC (October 2005 to February 2006 – MP/DAIAJE).
- Creation of a model form for use by prosecutors in requests or applications for international legal assistance in criminal matters. The model was also presented to the meeting of experts in mutual legal assistance in criminal matters of the OAS in the framework of REMJA (MP / DAIAJE).
- DAIAJE is in process of setting up a new office called the "Department of Foreign Cooperation" which will implement and coordinate international technical and financial cooperation for the Office of the Attorney General.
- DAIAJE has also drawn up a draft operating manual and an annual operations plan which are pending approval.
- Furthermore, DAIAJE, in conjunction with CISNI and the Training Center of the Office of the Attorney General, is developing a basic document on international legal cooperation in the framework of the IACC, which is intended for judges and prosecutors and aims to provide tools and models for extradition proceedings and letters rogatory sent to other countries.

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

The Office of the Attorney General has institutionalized its function as the Central Authority for judicial matters through the creation of the Directorate of International Affairs and Foreign Legal Assistance, which has been allocated the necessary human and financial resources to carry out its functions. The progress with respect to the functions exercised by the Office of the Attorney General as the Central Authority for judicial matters is described in point 5 above.

With respect to this recommendation, the legal and budget situation of CISNI, as the consultative authority, remains unchanged since the date of presentation of the report in the framework of the first round. In that regard, CISNI operates with funds provided by the Inter-American Development Bank (IDB) for implementation of the National Probity Plan and acts as Executive Secretariat of CITAIC.

### **TRAINING IN ASPECTS CONNECTED WITH STANDARDS OF CONDUCT FOR PUBLIC SERVANTS**

In follow-up on the recommendations made to Paraguay, CISNI, as the consultative authority, has carried out in conjunction with several public institutions a range of training activities in areas of interest for the first round. Following is a concise summary of these activities by year:

**In 2003**, 23 training events were held for representatives of state institutions with which CISNI has signed inter-institutional cooperation agreements, as well as civil society organizations. Approximately 1,400 persons participated in events on: Responsibility and Transparency in Public Management; Control of Public Affairs and Oversight Bodies; Ethical Management Indicators in the Civil Service;

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<sup>4</sup> MP / DAIAJE: Office of the Attorney General / Directorate of International Affairs and Foreign Legal Assistance

Accountability and Participation; the Inter-American Convention against Corruption As an Anti-Corruption Instrument and Its Relationship with the National System of Laws; Probity and Social Oversight; Citizen Observatory on Customs and Government Contracting; Tax Education; Corporate Commitment and Probity; Access to Information; Improvement of the System for Registration of Assets and Income by Public Servants; Situation of Local Rules and Regulations on Complaints Reporting Systems; and Current Situation with Respect to Regulation of Ethical Conduct and Challenges for Codes of Ethics.

**In 2004**, 24 training events and dialogues were held with state institutions and civil society organizations. Training was provided to approximately 870 persons on different issues, such as: The Role of Transparency Units in the Fight against Corruption; Transparency in Public Administration, Access to Public Information As a Duty and a Right; Progress of the Office of the Attorney General As Judicial Authority for the IACC; Introduction to the United Nations Convention against Corruption; Guidelines for a Law on Citizen Participation; Public Hearings as a Citizen Participation Mechanism; Corporate Social Responsibility and Corporate Good Governance as Contributions to Probity Building; Civic Education and Social Responsibility of Education Institutions, and others.

**In 2005**, 28 training events and dialogues were held with state institutions and civil society organizations. The events covered a variety of issues similar to those of the two previous years and were attended by some 1130 people overall.

Moving forward with the institutionalization of training on institutional probity and the fight against corruption, the training module on “Transparency, Ethics, and Probity in Public Administration” was implemented at key institutions: Ministry of Finance, Customs Bureau, and the National Navigation and Ports Administration. The issues addressed were: Individual and Collective Ethics; the State and Politics; the Relationship between Political Parties, Government and State; Corruption and Its Distorting Effect on the Function of the State; Forms of Corruption; Anti-Corruption Efforts; the Conventions against Corruption, and others. The module was carried out in 15 training workshops with officials of the Customs Bureau and the National Navigation and Ports Administration, Customs Agents, and officials of the National Free Zones Council. Approximately 790 people took part in the training module.

In addition to this module other training events were held, *inter alia*, on: the Conventions against Corruption and Progress of the Transparency Unit of the Office of Inspector General of Public Spending. The first training module of the Program on “Anti-Corruption Prosecution Tools” was implemented with the Office of the Attorney General; the module was entitled “The Inter-American Convention against Corruption: Application Tools”. An encounter was also held on Doctrinal Aspects of the IACC: Myths and Realities. A variety of training workshops were held with civil society organizations, *inter alia*, on: Current Challenges for Civic Education; Public Administration and Ethics; and Leadership in Negotiation for Citizen Participation.

**In 2006 to date**, 17 training workshops have been held in the framework of the Module: “Transparency, Ethics, and Probity in Public and Private Sector Administration,” in which approximately 450 officials from the DNA, Ministry of Finance and ANNP have taken part. It is proposed to hold a further 19 training workshops with officials from the Ministry of Finance. In May, INECIP – Py. held the “First National Seminar on Conduct, Transparency, and Access to Judicial Information” with the sponsorship of CISNI and funding provided by USAID. The event was attended by approximately 300 people, including lawyers, representatives of the judicial branch, and law students. The training workshop entitled “The Inter-American Convention against Corruption: Application Tools” was again implemented at the Office of the Attorney General for 15 anti-corruption prosecutors. Thus far, three out of a proposed six training workshops have been held with the Citizen Oversight Network (*Red de Contraloría Ciudadana*), on various issues to do with oversight of public administration.

For its part, the **Department of Government Contracting (DGCP)** of the Ministry of Finance, reported that at the date of this report, 1259 officials from different state institutions had received training in different aspects of the new contracting system and transparency rules that are being instituted. The DGCP has relied on *Transparencia Paraguay* to provide training in this area as well as for the signing of ethics agreements in different government contracting processes.

Due to the particular nature of the activities of the **Institute of Comparative Studies in Criminal and Social Sciences (INECIP)** on issues targeted by the IACC, we mention the training courses jointly carried out with state public institutions.

In the framework of the Whistleblower Protection Project:

- As part of the “Training Plan on Administrative Investigation and Fighting State Corruption”, in joint coordination with the Civil Service Secretariat, training was provided on “Administrative Investigation Procedure” in accordance with the provisions contained in Chapter XI of Law 1626/00 (Civil Service Law). The training course, which lasted 20 hours targeted lawyers at different ministries as well as examining judges in the executive branch.
- Training on Investigation Techniques was provided in conjunction with the Training Center of the Office of the Attorney General to prosecutors, prosecutor’s assistants, and technicians in the Anti-Corruption Prosecution Unit.

#### **IV. CONCLUSIONS AND RECOMMENDATIONS**

##### **A) CONCLUSIONS AND RECOMMENDATIONS ON IMPLEMENTATION OF THE PROVISIONS SELECTED FOR REVIEW IN THE SECOND ROUND**

- In the light of the information collected it would be reasonable to say that the main weakness of the Paraguayan probity system is the absence of a civil service career and a unified framework on standards of ethical conduct for public servants. The Paraguayan State urgently needs to create an effective civil service career and approve the Public Ethics Law in the interests of strengthening its institutional probity system and significantly reducing the risks associated with political interference and prebendalism in public institutions.
- Considerable progress has been made in the area of government contracting and there have been visible strides as regards the transparency and legitimacy of state procurement. The main challenge is to strengthen the purchasing operations units in order to improve procurement planning and compliance with the requirements provided in the new law in force, as well as to follow up on obligations contained in awarded contracts.
- As regards protection of persons who report corruption, it is hoped that the bill before Congress is adopted and the protection mechanisms that it provides are implemented. It is equally important to mention that despite the absence of a unified legal framework it has been possible to implement pilot whistleblower protection initiatives through partnerships between public institutions and civil society organizations that specialize in this area.
- As to the legal framework for punishing acts of corruption, it is important to draw attention to the fact that, in accordance with the requirements of the IACC, the Paraguayan criminal-law framework provides for all the main types of crime recognized in the Convention.

##### **B) CONCLUSIONS AND RECOMMENDATIONS ON PROGRESS IN IMPLEMENTATION OF RECOMMENDATIONS FORMULATED IN THE NATIONAL REPORT IN THE FIRST**

- Regulation of conduct of public servants: While the courts have yet to dispose of all the unconstitutionality actions that hamper full application of Law 1626/2000 (Civil Service Law), it is, nonetheless, important to mention that the laws promulgated against nepotism, illicit enrichment and influence peddling, and misuse of public property constitute a significant stride in the fight against corruption.
- Mechanisms for access to public information: Owing to the complete rejection by the Senate of the bill on this matter that was approved by the House of Deputies in December 2005, the enactment of a law regulating Article 28 of the Constitution still appears uncertain and remote. However, there is nothing to prevent the executive branch from issuing a regulatory order containing provisions on access to public information that would be provisionally applicable to all public entities dependent on the State. Such a norm could be based on several of the large number of regulatory provisions that exist in this area, such as, for example, the provisions contained in Municipal Ordinance 22/96 (“*In the Light of Day*”) issued by the Municipality of the City of Asunción, which governs exercise of the constitutional right enshrined in Article 28 of the Constitution.
- Training on proper conduct of public servants: The review mentions progress and reveals that the main challenges pending are unification of the regulatory framework and institutionalization of training programs as part of a public policy on promotion of probity.
- Indicators to monitor progress: CITAIC has a Plan of Action for Implementation of the Recommendations of the Inter-American Convention against Corruption (December 2005). The Plan was drawn up in the framework of the technical cooperation provided by the General Secretariat of the OAS to CISNI. This document contains indicators on:

Standards of Conduct and Mechanisms to Enforce Them; System for Registration of Income, Assets, and Liabilities; Oversight Bodies; Participation of Civil Society; Mutual Technical Cooperation and Assistance; and Central Authorities.

- The main challenge when working with indicators is to have mechanisms for measuring progress and results. While there are still weaknesses in terms of generation of systematic and reliable information, the main accomplishments at the date of this report are: a) systematization of the procedure for presentation of congressional reports on laws promulgated in accordance with the terms agreed between that institution and CISNI; b) the data collected on the civil service career include the results of the National Census of Public Servants by the Civil Service Secretariat and reports from a number of institutions that hold public competitions to fill job vacancies; c) as part of the institutionalization of the mechanism for implementation and monitoring of the IACC, the Technical Secretariat for Planning has developed in the 2007 AOP an instrument that distinguishes projects on modernization of public administration, anti-corruption, and State-civil society relations, from other projects. This fact should be regarded as highly positive because it will enable monitoring in greater detail of activities in areas of interest.

#### GENERAL RECOMMENDATIONS:

In view of Paraguay's experience in MESICIC, the results of the Plan of Action for Implementation of the Recommendations of the Inter-American Convention against Corruption of CITAIC, and the interest of CISNI to encourage adoption of a public policy on probity in public institutions, the following priority measures are recommended:

- **Create** the civil service career, giving precedence to suitability as the core factor in selection and promotion. This measure, despite its vital importance for the National Probity System, still remains a pending task for the Paraguayan State.
- **Strengthen** the following preventive measures recognized as valid instruments in the fight against corruption in all public institutions: transparency measures and training in administrative management instruments (government contracting system, preparation of procurement plans, budget management, and others); creation and/or consolidation of citizen participation measures, particularly as regards inclusion of reporting systems, public information systems, mechanisms for citizen participation in follow-up of public administration, and education and training programs on the functions of the State.
- **Enhance** inter-institutional coordination in areas relating to probity and programs to combat corruption.
- **Harmonize**, through a National Probity Plan the Inter-American and United Nations Conventions against Corruption, drawing a distinction between preventive and punitive measures, in order to facilitate identification of the bodies responsible for their enforcement. This harmonization would make it possible to unify review criteria and facilitate follow-up and evaluation of implementation of the provisions contained in the Conventions
- In addition to **targeting** the institutions and sectors that are most vulnerable and exposed to the risk of corruption according to predetermined objective parameters, it is a priority to **broaden** the adoption of preventive measures so that all public institutions are encompassed.
- **Bear in mind** as an important variable public skepticism towards the effective implementation of the IACC. In this regard it would be advisable to ensure that goals can be realistically met in the times set for them, and to accompany the process with a communication program designed to ensure greater effectiveness in dissemination of the provisions contained in the Convention in order to effectively draw public attention to institutional efforts in this regard, so that the more critical segments of the public can learn to appreciate and value them.
- **Also strengthen** punitive systems to combat impunity and effectively hold accountable anyone who commits acts of corruption
- **Adopt** permanent legal standards and create effective systems to protect the identity of persons who in good faith report acts of corruption.

## V. OBSERVATIONS OF TRANSPARENCIA PARAGUAY

The observations made by Transparencia Paraguay on the response of Paraguay to the Questionnaire, are available at:

[www.oas.org/juridico/spanish/Lucha.html](http://www.oas.org/juridico/spanish/Lucha.html)

[www.oas.org/juridico/spanish/mesicic2\\_pry\\_inf\\_sc\\_anexo\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic2_pry_inf_sc_anexo_sp.pdf)

[www.oas.org/juridico/spanish/mesicic2\\_pry\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic2_pry_inf_sc_sp.pdf)

### SOURCES CONSULTED:

- Presidential Report to the National Congress, July 2006.
- Communication from the Assistant Prosecutor's Office, Area II, June 29, 2006.
- Communication from the Department of Government Contracting, June 16, 2006.
- Communication from the Coordinator of the Transparency and Citizen Participation Unit of the Ministry of Finance, June 30, 2006.
- Supreme Court of Justice. Performance Report. December 2005.
- Report on institutional measures for promotion of probity of the Ministry of Finance, Customs Bureau, National Navigation and Ports Administration, Supreme Court of Justice, Office of the Attorney General, May 2006. See [www.pni.org.py](http://www.pni.org.py)
- Code of Judicial Ethics of the Republic of Paraguay. Supreme Court of Justice. December 2005.
- Ministry of Finance Training System Pilot Plan. February 2006.
- Note CGR N° 876/06. Office of the Inspector General of Public Spending. March 20, 2006.
- Final Report on Transparency in Sworn Declarations of Assets of Public Servants. *Transparencia Paraguay*. January 2006.
- Report on Legislative Output of the National Congress, published in the statistics section of *Gestión Legislativa de la Cámara de Senadores*. Año 2, N° 5. June, 2006 .
- Proposed Law on Protection of Persons Who Report Acts of Corruption. Activity Report. Institute of Comparative Studies in Criminal and Social Sciences of Paraguay (INECIP), July 2006.

### Laws and other regulatory provisions attached:

- Constitution of the Republic of Paraguay
- Law 276/1993 "Organic and Operational Law of the Office of the Inspector General of Public Spending"
- Law 1160/1997 "Paraguayan Criminal Code"
- Law 1535/1999 "Law on Financial Administration of the State"
- Law 1562/2000 "Organic Law of the Office of the Attorney General"
- Law 1626/2000 "Civil Service Law"
- Law 2051/2003 "Law on Government Contracting" and its Regulatory Order 21909
- Law 2248/2003 "Amending Article 30 of Law 879/1981, Judicial Organization Code"
- Law 2523/2004 "Law against Illicit Enrichment and Influence Peddling"
- Law 2535/2005 "Law adopting the United Nations Convention against Corruption"
- Law 2564/2005, amending, *inter alia*, Article 48 of Law 1562/2000, "Organic Law of the Office of the Attorney General".
- Law 2777/2005 "Law against Nepotism in the Civil Service"
- Law 2880/2005 "Law against Crimes against State Property"
- Bill on Ethics in the Civil Service, presented by Senator Carlos Filizzola in September 2005
- Bill on Protection of Persons Who Report Acts of Corruption, presented by Senator Carlos Filizzola in August 2004
- Draft Bill on the Civil Service Career and Government Employees, modified as of March 16, 2006, prepared by the Team of Legal Experts of the Civil Service Secretariat, Executive Branch.
- Resolution F.G.E. 988 of May 30, 2005, which creates the Anti-Corruption Prosecution Unit.
- Resolution F.G.E. 1968 of August 30, 2005, which amends articles of the Internal Rules of Procedure of the Office the Attorney General.
- Resolution F.G.E. 2239 of September 30, 2005, Appointing Prosecutors to be Specialized Counter-Narcotics Unit and the Anti-Corruption Prosecution Unit.
- Inter-Institutional Cooperation Agreement between the Office of the Inspector General of Public Spending and the Office of the Attorney General, September 20, 2005.

### SECTION THREE

Information on the officials responsible for completion of this questionnaire

(a) State party: Paraguay; (b) The officials to be consulted regarding the responses to the questionnaire are:

<p>Ms. María Soledad Machuca Title/position: Assistant Prosecutor Agency/office: Office of the Attorney General Mailing address: 1.000 Telephone number: (595 21) 4155100/ 4155000 (Ext.148) Fax number: Idem E-Mail address: mmachuca@ministeriopublico.gov.py</p>	<p>Ms. Mercedes Argaña Title/position: Executive Director, Technical Unit Agency/office: Council for Promotion of the National Probity System - CISNI Mailing address: Telephone number: (595 21) 374 717/8 Fax number: Idem. E-Mail address: cisni@pni.org.py</p>
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