

UPDATED RESPONSE FROM PERU

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

QUESTIONNAIRE ON PROVISIONS SELECTED BY THE COMMITTEE OF EXPERTS FOR ANALYSIS WITHIN THE FRAMEWORK OF THE FIRST ROUND¹

I. BRIEF DESCRIPTION OF THE LEGAL-INSTITUTIONAL SYSTEM

The Government of Peru is unitarian, representative, decentralized and organized according to the principle of the separation of powers. There are three branches of government, namely the Executive, the Legislative and the Judicial Branches, and each of these branches is autonomous and independent.

The Executive Branch consists of the President and two Vice Presidents. The President carries out the functions of Head of State. He symbolizes and represents the country's ongoing interests. In turn, as Head of Government, he directs governmental policy, supported by the political-electoral majority.

The administration and management of public services are entrusted to the Council of Minister, with each minister responsible for matters within his or her portfolio.

The Minister of Justice is responsible for providing legal advice to the Executive Branch and to the Council of Ministers in particular; for promoting efficient and rapid administrative of justice, linking the Executive Branch with the Judicial Branch, the Office of the Attorney General and other entities; for coordinating the Executive Branch's relations with the Catholic Church and other denominations; for systematizing, publicizing and coordinating the legal system; for regulating and supervising registry, notary and foundations functions; and for ensuring appropriate policies in the National Penitentiary System and the National Archives System.

The Legislature is a unicameral body with 120 members or delegates. A delegate's role is a full-time position and he or she is prohibited from holding any other position or practicing any other or trade during the hours that the Congress is in operation.

The mandate of a delegate to Congress is incompatible with the exercise of any other public function, except that of Minister of State, and the performance, with prior authorization from Congress, of special commissions of an international nature.

In addition, the power to administer justice emanates from the people and is exercised by the Judicial Branch through its hierarchical divisions in accordance with the Constitution and the law.

The Constitutional Tribunal is the body that exercises oversight on matters of constitutionality. It is autonomous and independent of the other constitutional agencies. It is subject only to the Constitution and its Organic Law.

The National Judiciary Council is an autonomous body independent of the other constitutional bodies and is responsible for selecting, appointing, confirming and removing judges and prosecutors at all levels, except when they are popularly elected, in which case it is only empowered to grant the title and impose the sanction of removal when appropriate under the law.

The People's Defender is responsible for defending the constitutional and basic rights of individuals and the

¹[1] This questionnaire was adopted by the Committee of Experts of the Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption, in its second meeting, held on May 20 to 24, 2002, at OAS Headquarters, Washington, D.C.

community and for supervising the fulfillment of the duties of public administration and the delivery of public services.

The Office of the Attorney General is the autonomous state body whose principal functions are to defend legality, citizen rights and public interests, to present the society in legal matters, for purposes of defending the family, minors, the disabled and the interests of society, as well as to safeguard public morality, to prosecute crime and redress grievances. It must also seek to prevent crime within legal limitations and safeguard the independence of judicial bodies and the proper administration of justice and other areas entrusted to it by the Political Constitution of Peru and the country's legal system.

The Office of the Comptroller General is the technical body that directs the National Oversight System. It has administrative, functional, economic and financial autonomy and its mission is to efficiently and effectively direct and supervise governmental oversight, directing its actions toward strengthening and promoting transparency in the management of agencies, promoting the values and responsibilities of public officials and servants, and assisting the branches of government in decision-making and the citizenry in adequately participating in social oversight.

The purpose of the National Commission to Combat Corruption and Promote Ethics and Transparency in Public Management is to recommend national policy to prevent and combat corruption; to promote ethics and transparency in public administration; to prevent, evaluate and report to the Office of the Attorney General conduct that constitutes acts of corruption committed by individuals or legal entities involving public funds; to prepare the Annual Plan to Prevent and Combat Corruption; to submit legislative or administrative proposals through the Chair of the Council of Ministers that help to reduce and prevent corruption, and to encourage transparency in public administration and administrative simplification. It reports to the Executive Branch on legal gaps that it is aware of, promotes international cooperation in the area of preventing and combating corruption, and promotes a culture of values in society, emphasizing ethical conduct on the part of citizens.

The basic purpose of the National Police of Peru is to guarantee, maintain and reestablish internal order. It provides protection to and assists individuals and the community. It guarantees compliance with laws and the security of public and private assets. It prevents, investigates and combats crime. It monitors and controls borders.

Finally, we should point out that ratification of the Inter-American Convention against Corruption was provided through Supreme Decree No. 012-97-RE, and the Convention took effect for Peru as of July 4, 1997.

II. CONTENT OF THE QUESTIONNAIRE

CHAPTER ONE

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

1. General standards of conduct and mechanisms

a. Are there standards of conduct in your country for the correct, honorable and adequate fulfillment of public functions? If so, briefly describe them and list and attach a copy of the related provisions and documents.

Yes, Article 39 of the 1993 Political Constitution of Peru establishes that all public officials and employees are in the service of the nation.

An initial step, predating the Inter-American Convention against Corruption, was Legislative Decree No. 276, the Framework Law on the Civil Service [*Ley de Bases de la Carrera Administrativa*], dated March 6, 1984, which establishes standards of conduct for the correct, honorable and proper fulfillment of public functions, in general terms, as follows:

“Article 3.- Duties of office.-

To carry out public service, seeking the national development of Peru and recognizing that public service transcends periods of government; make individual interest subordinate to the common interest and the duties of service; constitute a qualified and constantly improving group; perform ones functions with honesty, efficiency, diligence and a calling to service, and conduct oneself with dignity in the performance of ones position and in ones social life.”

“Article 7.- Exclusivity of public service.-

No public servant may hold more than one compensated government job or position, including in companies owned directly or indirectly by the state or in quasi-public companies. It is also incompatible to simultaneously receive compensation and pensions for services provided to the State. The only exception to both principles relates to educational duties where it is compatible to receive pensions and special compensation.”

“Article 25.- Disciplinary system

Public servants are civilly, criminally and administratively responsible for compliance with legal and administrative rules in carrying out public service, without prejudice to sanctions of a disciplinary nature for offenses they commit.”

In addition, Title I, Article V of the Law on General Administrative Procedure [*Ley del Procedimiento Administrativo General*], Law No. 27444, dated April 11, 2001, establishes the basic principles of administrative procedure, primarily with respect to the activities of public officials and servants, such as the principles of legality, professionalism, reasonability, impartiality, conduct according to procedure, material truth, uniformity and predictability.

Article 242 of Law No. 27444 establishes that the Chair of the Council of Ministers or the individual designated by the Council organizes and continuously maintains a National Registry of Sanctions involving dismissal and removal of any official or employee in the service of the Council, regardless of their labor or contractual regime, in order to prevent their readmission to any agency for a period of five years.

Supreme Decree No. 120-2001-PCM created the National Commission to Combat Corruption and Promote Ethics and Transparency in Public Administration, answering to the Chair of the Council of Ministers. Its functions include promoting ethics and transparency in public administration; holding public hearings for preventive purposes on matters within its competence, in order to formulate relevant suggestions, conduct period surveys and studies designed to analyze the phenomenon of corruption as well as determine its causes, submit legislative or administrative proposals through the Chair of the Council of Ministers that help to reduce and prevent corruption, reporting to the Executive Branch on legal gaps about which it has knowledge; promoting international cooperation in the area of preventing and combating corruption; and promoting a culture of values in society, emphasizing ethical conduct on the part of citizens.

In response to the serious acts of corruption that have been committed in Latin America during the last decade, many countries have made progress in creating agencies to combat corruption, and in creating and implementing codes of ethics for their public officials and employees, as one among many mechanisms for preventing and combating corruption. Thus, Law No. 27815, the Law on a Code of Ethics in Civil Service [*Ley de Código de Ética de la Función Pública*] was enacted on August 3, 2002 and applies to all Public Administration without distinction as to the system that the public official or employee enters, including those who render their services ad-honorem.

The law governs the conduct of public officials based on ethical principles that must govern the exercise

of public service, stipulates that the purpose of public service is the common good and the public employees owe loyalty to the Constitution and the law, and to ethical principles above personal interests. It also includes an article on sanctions, cross-referencing the rules relating to civil service.

The principal objective of this Code of Ethics is to imbue the actions of state agents with a sense of respect for public matters, for commitment to society and basic behaviors of efficiency and effectiveness, valuing and dignifying the exercise of public service. Nonetheless, although codes of ethics prescribe express duties and functions of public services in order to make their performance more efficient, transparent, and democratic, their effectiveness does not, in the opinion of specialists, depend solely on legal considerations and follow-up and auditing mechanisms to ensure compliance. This code must also be accompanied by socio-cultural determinants that contribute to the development of new forms of connection and shared responsibility between the State and society, which redound in greater levels of trust and democratic governability, achieving a State in the service of the citizen, which is the broad objective we have set for ourselves.

In addition, Legislative Resolution No. 021-2001-CR of July 20, 2002 approves the Parliamentary Code of Ethics, the purpose of which is to establish the rules of conduct that members of Congress must observe in the performance of their duties. It seeks to preserve the image that Congress must project in the country and ensures transparency in the management of funds entrusted to it. It prevents, investigates and sanctions legislators who make use of their positions to enrich themselves or commit acts of corruption.

Members of Congress must carry out their work in accordance with the principles of independence, transparency, honesty, veracity, respect, tolerance, responsibility, democracy, the common good, integrity, objectivity and justice. The principle of independence must be understood as tempered by loyalty to the political group to which they belong.

In recent years, Codes of Ethics have been created in various agencies: the Chair of the Council of Ministers (Ministerial Resolution No. 253-2002-PCM), the National Office of Electoral Processes (Departmental Resolution No. 230-2002-J/ONPE), Public Records (Resolution of the National Superintendent of Public Records No. 287-2002-SUNARP/SN), the National Fund for Compensation and Social Development (Executive Management Resolution No. 074-2002-FONCODES/DE), the Office of the General Comptroller of the Republic (Office of the Comptroller Resolution No. 077-99-CG).

Finally, we must point out that Law No. 27588, which establishes prohibitions and incompatibilities for public officials and employees as well as for individuals who render services to the State under any contractual method, dated December 13, 2001, also establishes that directors, titular heads, senior officials, members of Consultative Councils, Administrative Tribunals, Commissions and other deliberative bodies that carry out a public function or State mission, the directors of State companies or their representatives on boards, as well as advisers, officials or employees with specific missions that, due to the nature of their role or the services they provide, have gained access to privileged or relevant information, or whose opinion has been determining in decision-making, are required to observe secrecy or confidentiality regarding matters or information characterized as such by express law. In addition, they may not divulge or use information that, while not being expressly reserved by law, could be privileged based on its content, by using it for their own benefit or that of third parties and to the detriment of the State or third parties.

Violation of the provisions of the preceding paragraph would involve transgression of the principle of good faith and shall be sanctioned with disqualification for rendering services to the State, without prejudice to any administrative, civil and criminal actions that may apply.

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

Yes.

Article 25 of Legislative Decree 276, the Framework Law on Civil Service, dated March 6, 1984, establishes that public servants are civilly, criminally and administratively responsible for compliance with legal and administrative standards in the exercise of public service, without detriment to sanctions of a disciplinary nature for offenses they commit. However, this standard is generic and thus has not been broadly applied.

In addition, Article 10 of Law No. 27815, the Law on a Code of Ethics in Public Service, establishes as follows:

“10.1 Violation of the principles and duties established in Chapter II and the prohibitions indicated in Chapter III of the Law is considered a violation of this Code, creating responsibility subject to punishment.

10.2 The Regulations of this Law establish the respective penalties. For their ranking, the rules on civil service and the labor system applicable by virtue of the position held or duty performed shall be taken into account.

10.3 The sanctions applicable for violation of this Code do not provide exemption from administrative, civil and criminal responsibilities established by law and regulation.”

In addition, Law No. 27588, which establishes prohibitions and incompatibilities for public officials and employees, as well as for those who render services to the State under any contractual method, dated December 13, 2001, indicates in Article 1 that “Violation of the provisions of this article shall imply violation of the principle of good faith and shall be punished with disqualification for rendering services to the State, without prejudice to any administrative, civil and criminal actions that may apply” and in Article 4 establishes that failure to comply with the provisions contained in this Law shall lead to collection of a penalty increasing to the total amount of compensation, fees, per diems or any other economic benefit received or agreed, without prejudice to any civil or criminal responsibilities that may apply.”

In addition, given that Law No. 27815 on a Code of Ethics in Public Service has only recently taken effect, there are as yet no effective mechanisms ensuring compliance with such standards. However, the Law on a Code of Ethics in Public Service establishes the responsibility of the senior division in each public agency to disseminate the guiding principles embodied in the Code of Ethics. In addition, it is established that the guidelines on conduct embodied in the law would generate histories in the National Registry of Sanctions involving Dismissal and Removal, as well as specific penalties envisioned in the law's regulations. To date, said regulations have not yet been published.

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

Currently there is no information available regarding the results of implementing the ethical standards promulgated by each public agency until regulations are provided for Law No. 27815 on a Code of Ethics in Public Service. Given their newness, we feel that it is not yet possible to evaluate the results of their implementation.

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

There are standards and mechanisms.

2. Conflicts of interests

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

Yes, there are standards designed to prevent conflicts of interest in the performance of public functions.

Article 40, paragraph 1 of the Political Constitution prohibits a public official or employee from holding more than one compensated government position at a time, except when the other position is a teaching position.

Article 7 of the Preliminary Title of Legislative Decree No. 276, the Framework Law on Civil Service and Public Sector Compensation, indicates that no public servant may carry out more than one compensated government position, including in companies owned directly or indirectly by the State, or quasi-public companies. It is also incompatible to simultaneously receive compensation and pension for services rendered to the State. The only exception to both principles is the role of educator where it is compatible to receive pension and special compensation.

Article 139 of the Regulations for the Law on Civil Service, S.D. No. 005-90-PCM, establishes that as long as their labor relationship lasts with government service, through an agency, both public officials and employees are forbidden to perform another compensated position and/or to sign a service leasing contract under any system with another public agency or state company, except to carry out a teaching position."

This prohibition is extended under Articles 92 and 126 of the Constitution to members of Congress and Ministers of State, indicating that members of Congress serve full time and are prohibited from holding any other position or practicing any profession or trade during the hours of operation of the Congress.

The mandate of members of Congress is incompatible with the performance of any other public function, except that of Minister of State, and the performance, with prior authorization from the Congress, of special missions that are international in nature.

The role of a member of Congress is also incompatible with the position of manager, authorized agent, representative, proxy, attorney, majority shareholder or board member of companies that have contracts with the state for works, supplies, or provisions, or that administer public revenues or provide public services. The role of a member of Congress is incompatible with similar positions in companies that, during the member's term, obtain state concessions, as well as companies in the financial and credit system that are supervised by the Superintendency of Banks and Insurance Companies."

Articles 18, 19 and 20 of the Consolidated Text of the Regulations of the Congress of the Republic state:

Article 18.- The position of a member of Congress is a full-time position. It includes work in Full Sessions, on the Permanent Committee and on Committees, as well as on the Parliamentary Group and attending to citizens and social organizations and any other parliamentary work, with the possible inclusion of a position on the Congress' Management Committee or Management Council."

Article 19 .- "The position of a member of Congress is incompatible with:

- a) Holding any other government position except that of Minister of State and the conduct, with prior authorization from the Congress, of special missions that are international in nature.
- b) The position of manager, authorized agent, representative, proxy, attorney, majority shareholder or board member of companies that have contracts with the State for works, supplies or provisions, or that administer public revenues or provide public services.
- c) The position of manager, authorized agent, representative, proxy, attorney, majority shareholder or board member of companies or private institutions that, during their term in Congress, obtain concessions from the State, as well as companies in the financial and insurance system supervised by the Superintendency of Banks and Insurance Companies."

Article 20.- "During the performance of their term, members of Congress are prohibited from:

- a) Carrying out any position or practicing any profession or trade during the hours of operation of the Congress.
- b) Acquiring shares or accepting positions or representation in the companies indicated in Article 19 (b) and (c) above.
- c) Intervening in favor of third parties in cases pending a decision in the Judicial Branch.”

With respect to the Ministers of State, Article 126, paragraphs 2 and 3 of the Constitution state:

“Ministers may not carry out another public function, except for a legislative function.

Ministers may not be managers of their own interests or those of third parties nor may they engage in profit-making activities or participate in the management or administration of private companies or associations.”

There are other provisions that extend the protection of the State to ensure the proper management of public affairs, both to broader areas (privileged information and contracting of personnel with secondary motives, for example) and to a broader concept of “public employee.”

Law No. 26771, dated April 14, 1997, which bars appointments or hiring of personnel in the public sector in cases of kinship, is regulated through Supreme Decree No. 021-2000-PCM of July 27, 2000. These standards establish the prohibition on appointing and hiring staff in the public sector in cases of kinship up to the fourth degree by blood and the second degree by marriage.

Considering that the improper practice of nepotism promotes conflicts of interest between the public interest and private interests, Law No. 26771 and its Regulations contained in S.D. No. 021-2000-PCM, have established the prohibition on exercising the power to appoint and hire personnel in the public sector in cases of kinship up to the fourth degree by blood and the second degree by marriage.”

Article 1 of the Law as well as the Regulations provide for the application of this prohibition. This article states:

“Management and/or confidential employees in public entities and divisions that make up the National Public Sector, as well as state companies, who enjoy the power to appoint and hire personnel, or who have direct or indirect influence on the selection process are prohibited from exercising that power in their respective agencies with respect to their relatives to the fourth degree by blood and the second degree by marriage.

The prohibition is extended to Non-Personnel Services contracts.”

Article 2 of the Regulations, contained in D.S. No. 021-2000-PCM develops the assumptions that shall comprise the act of nepotism; Article 3 of the Regulations provides prohibitions that include the provisions of Article 1 of the Law. These articles state:

Article 2, D. S. No. 021-2000-PCM: OCCURRENCE OF THE ACT OF NEPOTISM.

“Nepotism, as described in Article 1 of the Law, occurs when management and/or confidential employees of the State exercise their power to appoint or hire, or have directly or indirectly had an influence on the appointment of personnel, the hiring of non-personnel services, or in the respective selection processes.

Direct influence is understood to mean that situation in which the act of nepotism occurs within the administrative unit or division.

Indirect influence is understood to mean influence that while not covered by the assumption contained in the preceding paragraph, is exercised by a management and/or confidential employee who, although not a part of the administrative unit in which the hiring or appointment occurred, has by virtue of his or her functions, some influence on those who make the decision to hire or appoint in the respective unit.”

Article 3.- The prohibitions established by Article 1 of the Law include:

- a) The prohibition on exercising the power to appoint, hire, intervene in staff selection processes, appointment of confidential staff or in ad honorem activities or to appoint members of professional bodies.
- b) The prohibition on exercising direct or indirect influence on appointments, hiring, personnel selection processes, designation of positions of confidence or ad honorem activities or appointment of members of professional bodies.

The prohibitions indicated in a) and b) of this article are applicable with respect to relatives up to the fourth degree by blood and the second degree by marriage.”

In addition, Law No. 27588, establishing prohibitions and incompatibilities for public officials and employees, as well as for individuals who render services to the State under any contractual method, dated December 13, 2001, regulated through Supreme Decree No. 019-2002-PCM, prohibits public officials and employees from rendering services, accepting compensated representations, acquiring shares or interests, entering into civil or commercial contracts or participating in representation (under the assumptions indicated in the rule), in private companies or institutions included within the purview of their public function.

Law No. 27588, which establishes “prohibitions and incompatibilities for public officials and employees, as well as individuals who render services to the State under any contractual method,” is applicable not only to the public officials or employees referred to in Legislative Decree No. 276, but also extends its scope of application to all persons who render services to the State (whether on a temporary or permanent basis), regardless of the legal regime or the entity in which they render services and regardless of the labor or contractual regime that connects them to the State.

That law establishes measures necessary to prevent any official, public servant or individual who, while belonging to a different regime, renders services to the State, and can benefit from or provide a benefit to third parties based on privileged information obtained through the performance of the position. In this way, it seeks, for example, to prevent a public official from sponsoring private interests in public bidding before a state agency in which he or she works, or to prevent the regulator from being hired by the regulated company when he or she leaves his or her government position, as well as other conflicts of interest.

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

Article 2 of Law No. 26771 establishes:

“The Internal Oversight Units of the agencies referred to in Article 1 shall be responsible for ensuring strict compliance with this law, under the responsibility of the Budget Envelope Chief or whoever is acting in his or her stead as applicable, without prejudice to the oversight actions carried out by the Office of the General Comptroller of the Republic.”

Article 4 of S.D. No. 021-2000-PCM, the regulations for the referenced law, states that:

“It is the responsibility of the Internal Audit Unit of each agency, as indicted in Article 2 of the Law:

1. To verify the content of the documents submitted by those who join the agency.
2. To verify that a transparent selection and evaluation process has been carried out according to the job or position that the employee or hire will hold in the agency, in accordance with Supreme Decree No. 017-96-PCM, in order to determine whether or not nepotism was committed by management and/or confidential staff of the same agency in the hiring or appointment.”

Penalties and disqualifications are governed by Articles 7 and 8 of Supreme Decree No. 021-2000-PCM. These articles provide as follows:

Article 7.- "Should it be proven that nepotism has been committed, the following officials shall be punished with suspension without pay.

7.1 A management official and/or confidential employee who while maintaining the kinship referred to in Article 1 of the law, hires or exercises any influence on the hiring of his or her relatives.

7.2 An official with respect to whom the direct or indirect influence referred to in Article 2 of these regulations. If the duty carried out or position held is a confidential one, the appointment shall be null or the contract shall be rescinded, as applicable.

The period of suspension shall depend on the seriousness of the offense and may not be more than one hundred eighty (180) calendar days. In the event of a repeated offense, the penalty shall be dismissal or rescission of the contract.

An official who is responsible for exercising direct influence on appointment and/or or hiring as applicable shall be jointly liable with the person appointed and/or hired, with respect to returning what has been received, as a result of the nullification referred to in Article 4 of Law No. 26771.

If at the time that the applicable sanction is determined the person responsible for the act of nepotism is no longer an official or confidential employee, the penalty shall consist of a fine equal to the compensation or income that said person would have received in a period of no more than one hundred eighty (180) calendar days. As long as he or she fails to pay the fine imposed, the person responsible may not be appointed to carry out a public function or position nor receive any income from the State."

Article 8.- "As of the effective date of these Regulations, those who join an agency in violation of the provisions of Articles 1 and 5 of the Law shall be disqualified from working in any of the agencies indicated in Article 1 of the Regulations, up to 2 years after termination of the labor or services contract."

Article 1 of Law No. 27588, which establishes prohibitions and incompatibilities for public officials and employees, as well as those who render services to the State under any contractual method, states that violation of the provisions in this article shall mean violation of the principle of good faith and shall be penalized with disqualification for providing services to the State, without prejudice to any administrative, civil and criminal actions that may be applicable.

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

At present we have no statistical information that would allow us to objectively establish the results obtained in implementing the above standards and mechanisms.

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

We do have standards and mechanisms.

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

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

Article 78 of the Political Constitution establishes that the Public Sector Budget must maintain an effective balance, and in this sense the behavior of tax revenues must be reflected in expenditures made by the State.

Each year austerity measures are established in the annual budget rules. Thus, Law No. 28128, the Public Sector Budget Law for Fiscal Year 2004, establishes measures on austerity, rationality, and transparency in public spending. The austerity measures constitute rules for maintaining fiscal balance regardless of the source of financing, which must be applied during execution of the approved budget.

The above-mentioned law establishes that making appointments is prohibited for budgeted positions, and is only admissible in the case of Judges in the Judicial Branch and the Office of the Attorney General; university teachers; healthcare professionals and assistants, teachers of the national teaching corps, graduates of the Armed Forces and National Police schools, and the Diplomatic School.

It is also forbidden to make payments to active and retired staff that do not comply with the regulations in force on administrative, civil and criminal liability of the head of the executing unit, the administrative chief, and the head or personnel or the person acting in his stead.

It is prohibited to pay compensation in foreign currency or compensation indexed to foreign currency, except for personnel belonging to the Ministry of Foreign Relations, the Armed Forces and the National Police who are serving abroad.

The envelope chief must approve through the corresponding resolution the directive containing the rationality measures to be applied during Fiscal Year 2004. These measures must consider, among other purposes, the prioritization and determination of actions that make it possible to comply with the objectives of the envelope at the lowest possible cost.

Foreign travel for missions that incur expenses charged to the state must be restricted to the essential minimum. In the case of the Executive Branch, trips will be approved through a supreme resolution signed by the Chair of the Council of Ministers and the Minister of the corresponding sector, with the exception of the Foreign Relations and Foreign Trade and Tourism sectors, as well as the General Civil Aviation Directorate of the Ministry of Transport and Communications, in which cases trips made by their officials and employees shall be authorized through a resolution of the respective envelope chief, which must be published in the Official Gazette *El Peruano* before the provision of services begins.

For the remaining entities, trips abroad by officials and employees shall be approved through a resolution of the envelope chief or by agreement of the Regional or Municipal Council, as applicable. Said resolutions or agreements must be published in the Official Gazette *El Peruano* before the provision of services begins.

In addition, no executing unit and public agency in general may grant any sums of money charged to the Institutional Budget for the benefit of a public servant to cover per diems for the provision of services abroad, training, instruction or the like, when such expenses are covered by the international agency organizing or sponsoring the event, regardless of the rule governing the allocation of per diems and similar items, under the responsibility of the head of the agency and the official who authorizes the trip.

In addition, trips within the country to provide services must be rationalized to the essential minimum. Per diems and another other allocations of a similar nature, in cash or in kind, for trips within the country that are commissioned under any heading or source of financing shall not exceed the amount of S/.200.00 (TWO HUNDRED AND 00/100 NEW SOLES) per day, provided that the commission lasts for more than twenty-four (24) hours. Otherwise, per diems shall be granted in proportion to the hours of the assignment regardless of the occupational category of the employee, his or her work relationship with the agency, or the reason for the service assignment. This includes expenses for meals, lodging, and transportation (to and from the departure point), as well as transportation used at the site where the service is performed.

The envelope for mobile telephone, beeper and cellular radio communication (digital trunk radio) may only assume total expenses averaging the equivalent of S/. 150.00 (ONE HUNDRED FIFTY AND 00/100 NEW SOLES) per month per team.

b. Are there mechanisms to enforce compliance with the above standards of conduct? If so, briefly

describe them and list and attach a copy of the related provisions and documents.

Law No. 28128, the Public Sector Budget Law for Fiscal Year 2004, establishes that the Chief of the Envelope or entity and of the officials that provide authorization is exclusively responsible for ensuring that public spending adheres to the directives issued by the National Directorate of the Public Budget, in accordance with the Law on Budgetary Management of the State – Law No. 27209, in the context of the principles of legality, regulatory centralization and operational decentralization, and the presumption of veracity.

The Office of the General Comptroller of the Republic shall be responsible for monitoring compliance with the provisions established in this chapter. In addition, he shall centralize and consolidate the evaluation reports issued by the Internal Audit Units, for later submission to the Congressional Committee on the Budget and General Accounts of the Republic within five (5) days following each quarter. The consolidated information must be published on the website of the Office of the General Comptroller of the Republic.

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

There are no objective results given that the year 2004 budget is now being executed.

d. If no such standards and mechanisms exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen the standards of conduct intended to ensure the proper conservation and use of resources entrusted to public officials in the performance of their functions, and mechanisms to enforce compliance, in accordance with Article III (1) and (2) of the Convention.

There are standards and mechanisms.

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

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

Yes.

Regarding the measures that require public officials to report to the appropriate authorities on acts of corruption in public office of which they are aware, Article 21 (g) of Legislative Decree No. 276 and Article 133 of its Regulations, state as follows:

Article 21 (g) of Legislative Decree No. 276: OBLIGATIONS.

“The following are obligations of public servants:

[...]

g) To report to senior levels on criminal or immoral actions committed in the exercise of public office.”

Article 133 of S.D. 005-90-PCM:

“Anyone who is aware of the commission of a criminal act in their workplace or under circumstances directly related to the exercise of public office has the obligation to report it to the competent senior authority in a timely manner.”

In addition, Article 11 of Law No. 27815, the Law on a Code of Ethics in Public Service, establishes that any public servant who is aware of any act contrary to the provisions of the Code has the obligation to inform the Permanent Commission on Disciplinary Administrative Procedures of the agency involved or the unit acting in its stead, so that it can carry out the respective process.

Regarding the penalties provided by domestic law for those who fail to comply with the obligation to report on acts of corruption in public office of which they are aware, the law has established administrative as well as criminal penalties. Regarding criminal penalties, Article 407 of the Penal Code defines the offense of failure to report:

“Article 407.- Anyone who fails to report to the authorities what they know regarding the commission of an offense, when they are required to do so based on their profession or job, shall be punished with imprisonment of no more than two years.

If the punishable act not reported is subject under the law to a prison sentence of more than five years, the penalty [for not reporting it] shall be no less than two years and no more than four years.”

It should be noted that the Ministry of the Interior has recently created (February 2002) the “Office of the Defender of the Police.” Its functions include investigating complaints filed by police and civilian personnel in the various hierarchies in active or retired status, reporting the violation of their human rights within the police, due to situations of abuse, discrimination or unjustified procedural delays; this represents a channel for reporting acts of corruption within the institution. For more information on this subject, see the website of that organization: <http://www.mininter.gob.pe/defensoria/index.html>.

In addition, the Public Defender’s Office includes among its functions that of ensuring that authorities and employees in various government institutions fulfill their responsibilities and serve the public properly. Oversight is always carried out from the perspective that government administration is subject to the Constitution and to the law. To do this, the office has the power to request all authorities, officials and employees of public agencies to provide the information needed to carry out its investigations, and they have a duty to cooperate. This activity can be channeled through the Adjunct Office of State Administration, which works at the level of the Ministries, decentralized government agencies, autonomous constitutional agencies, local government and regional governments. For more information on the Public Defender’s Office, see the website: www.defensoria.gob.pe.

Despite its recent creation, the statistical data from the “Office of the Defender of the Policy” is fully detailed on the institution’s website. See: <http://www.mininter.gob.pe/defensoria/100primeros.html>.

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

The administrative sanctions are those established by Legislative Decree No. 276, the Framework Law of Civil Service and Public Sector Compensation, and its Regulations contained in Supreme Decree No. 005-90-PCM; these apply to public officials and employees who belong to civil service. The penalties are found in Articles 25 to 83 [CHAPTER V – THE DISCIPLINARY SYSTEM] of Legislative Decree No. 276 and Articles 150 to 162 [CHAPTER XII – OFFENSES AND PENALTIES] of Supreme Decree No. 005-90-PCM.

Regarding criminal penalties, the Penal Code defines the crime of FAILURE TO REPORT in Article 407 [TITLE XVIII – OFFENSES AGAINST PUBLIC ADMINISTRATION, CHAPTER III –OFFENSES AGAINST THE ADMINISTRATION OF JUSTICE], which states:

Penal Code, Article 407: FAILURE TO REPORT.

“Anyone who fails to report to the authorities what he or she knows about the commission of a crime, when he or she is required to do so based on profession or position, shall be punished with imprisonment of no more than 2 years.

If the punishable act not reported is subject by law to imprisonment of more than 5 years, the punishment shall not be less than 2 or more than 4 years.”

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

Given that the Regulations for the Law on the Code of Ethics in Public Service have not been approved, it is impossible to determine the effectiveness of that law as an instrument for the reporting of corrupt acts in public office.

The requirement in the Penal Code mentioned above establishes that the respective report must be made to the competent authority, for which reason the respective levels would be determined for each specific case in the Judicial Branch.

d. If no such standards and mechanisms exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen the standards of conduct that establish measures and systems governing the requirement that public officials report to appropriate authorities acts of corruption in public office of which they are aware, and mechanisms to enforce compliance, in accordance with Article III (1) and (2) of the Convention.

There are standards and mechanisms.

CHAPTER TWO

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

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

Yes.

National legislation provides rules intended to govern the requirement that public officials and employees have to submit the SWORN STATEMENT OF INCOME AND ASSETS AND RENTS, in accordance with the provision of Articles 40 (final paragraph) and 41 (first paragraph) of the Constitution.

In addition, these articles of the Constitution also provide the requirement to publicize these statements.

The Constitution states as follows:

Article 40 of the Constitution (final paragraph): PUBLIC OFFICIALS AND EMPLOYEES.

“The periodic publication in the official gazette of the income that senior officials and other public officials indicated by law receive for any reason is required by reason of their positions.”

Article 41 of the Constitution (first paragraph): SWORN STATEMENT OF ASSETS AND INCOME.

“Public officials and servants indicated by law or who administer or manage government funds or the funds of government-supported agencies must make a sworn statement of assets and income upon assuming their positions, during the period of services, and upon leaving service. The respective publication appears in the official gazette in the manner and under the conditions indicated by law.”

The standard developed in Articles 40 and 41 of the Constitution is that of Law No. 27482, “which Governs the Publication of the Sworn Statement of Income, Assets and Rents of Officials and Public Servants of the State” and its Regulations contained in Supreme Decree No. 08-2001-PCM.

For purposes of the Regulations, assets, income and rents are understood as compensation, fees, income obtained from properties rented, subleased, or sold, movable assets rented, subleased or sold, interest from investments of capital, royalties, annuities, stipends or the like, fixed assets, savings, placements, deposits and investments in the financial system, other assets and income of the person making the statement, and anything that brings an economic benefit to the person subject to the requirement.

These provisions, in addition to establishing the requirement that public servants and officials of the State have to submit their sworn statement, govern the mechanisms for its publication.

Regarding those who are required to submit the Sworn Statement of income, assets and rents, Article 2 of the Law and Article 3 of the Regulations stipulate which public officials and employees are covered by that requirement, regardless of the system under which they work, contract or are connected to the State. Article 2 of the Law states:

Article 2 of the Law: THOSE SUBJECT TO THE REQUIREMENT.

“The requirement applies to the following persons:

- a) The President of the Republic and the Vice Presidents; members of Congress; Ministers of State and Vice Ministers; Supreme Court Judges, Superior Court Judges, Specialized or Mixed Jurisdiction Judges; Attorney General, Supreme, Superior and Provincial Prosecutors; members of the Constitutional Court, the National Judiciary Council and National Elections Panel; the President of the Central Reserve Bank; Directors, General Manager and officers in Senior Management of the Central Reserve Bank of Peru; the Public Defender, the Assistant Public Defender; the Comptroller General of the Republic, the Assistant Comptroller General; the Superintendent of Banking and Insurance, SUNARP, ADUANAS and SUNAT, Assistant Superintendents; the Head of the National Electoral Processes Office and the Head of the National Identification and Civil Status Registry.
- b) Mayors and Administrators of Municipalities who manage funds in excess of 2000 Tax Units (UIT) per year; Ambassadors and Diplomatic Mission Chiefs, Regional Presidents, members of the Regional Coordination Council; and Rectors and Vice Rectors and Deans of the Public University Departments.
- c) General Officers and Admirals in the Armed Forces and National Police in active service, as well as Officers working in operational units responsible for the war on illegal drug-trafficking. In addition, Senior Officers who lead Large Units and Units and Quarter-Masters General in the Armed Forces and Inspectors in the National Police of Peru.
- d) Directors, Managers and Officials who have confidential positions or executive responsibility in the Office of the President of the Republic, the Ministries, the Commission to Promote Private Investment (*Comisión de Promoción de la Inversión Privada – COPRI*), the Special Committees to Promote Investment (*Comités Especiales de Promoción de la Inversión - CEPRIS*), the Autonomous Agencies; Autonomous Decentralized Agencies; Regulatory Agencies; Decentralized Public Institutions; Presidents of the Auditing and/or Liquidating Commissions; and Presidents and Directors of the Executive Council of Non-Governmental Organizations who manage resources that come from the State.
- e) Public Prosecutors, Ad Hoc Public Prosecutors, Assistant Prosecutors; Prefects and Assistant Prefects; those who represent the State before the boards of companies; those in charge of budget envelopes, agencies, institutions and projects that are part of the State. This requirement applies to the heads of or those responsible for public sector treasury, budget, accounting, auditing, logistics and supply systems.
- f) In the case of companies in which the State is a majority shareholder, Board members, the General Manager and those responsible for or heading treasury, budget, accounting, logistics and supply systems; in the case of companies in which the State has an interest but is not a majority shareholders, and Board members have been appointed by the State.
- g) Advisors and consultants to the persons indicated in paragraph a) and advisors and consultants to those responsible in public prosecutors' offices, including those who hold ad honorem positions duly appointed by resolution.
- h) All those who administer or manage State funds or funds of State-supported agencies.”

Article 3 states that the Sworn Statement must contain all income and rents, duly specified and valued both in the country and abroad, according to a single form approved by the Regulations of this Law.

Article 4 establishes that the Sworn Statement of Income and Assets and Rents must be submitted, upon taking up, annually during the course of, and upon leaving the office or position, to the General Directorate of Administration or the division acting in its stead. The submission of the Sworn Statement referred to in this Law constitutes a prerequisite and is essential for performance of the position.

For the purposes of this Law, income is understood as compensation and any financial benefit without exception that, based on work or other economic activity, the public official or servant receives.

The Sworn Statement is recorded and filed as a public instrument at the Office of the Comptroller General of the Republic; a copy authenticated by a competent official is filed in the respective agency.

At the end of each budget period, the person responsible for each budget envelope must submit to the Office of the Comptroller General of the Republic the respective appointments or contracts, as well as detailed information on all income received by public officials and public servants referred to in this Law.

Article 6 governs the Publication of the Sworn Statement of Income and Assets and Rents and indicates that the person in charge of each budget envelope is responsible for publishing in the Official Gazette, *El Peruano*, the Sworn Statement of Income and Assets and Rents submitted by public officials and employees of the State, as referred to in Article 2 of this Law, which statement must contain the valuation of assets and rents. Publication occurs during the first quarter of the budget period.

It should be mentioned that Article 22 of Legislative Decree No. 276 ("Framework Law on Civil Service and Public Sector Compensation" dated March 24, 1984) and Article 130 of the Regulations for the Civil Service Law (Supreme Decree No. 005-90-PCM, of January 15, 1990), - which reserve its scope solely to the sphere of public employees and officials in civil service -, already provided as one of the obligations of public servants the requirement to submit the sworn statement of assets and income. These articles state:

Article 22 of Legislative Decree No. 276:

"Public servants as determined by Law or who administer or manage State funds must make a sworn statement of their assets and income upon assuming and leaving their positions, and periodically during the performance thereof."

Article 130 of the Regulations:

"Officials shall submit a sworn statement of assets and income; so too shall public servants charged with the control, management and administration of public funds. The sworn statement shall be submitted every two years in the first week of the month of January under administrative responsibility, in addition to the requirement to do so upon assuming and leaving the position."

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

The publication of sworn statements by officials and public servants has awakened interest among the citizens and there has been full compliance among public officials and employees in civil service. In addition, in some cases, given the assumption considered in Article 401 of the Penal Code [which establishes that an indication of illicit enrichment can be considered to exist when the increase in the assets of an official or public servant, considering their sworn statement, is notably higher than what they could normally have], sworn statements have constituted indications that have led to judicial investigations.

c. If no such regulations exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen the regulations that establish methods for registering the income, assets and liabilities of those who perform public functions in certain posts as specified by law and, where appropriate, for making such disclosures public, in accordance with Article III (4) of the Convention.

Yes, there are regulations.

**CHAPTER THREE
OVERSIGHT BODIES**

a. Are there oversight bodies charged with the responsibility of ensuring compliance with the provisions stated in Article III (1), (2) and (4)? If yes, list and briefly describe their functions and characteristics, and attach a copy of the related provisions and documents.

Yes.

Law No. 27785, the Organic Law of the National Oversight System and the Office of the General Comptroller of the Republic is under the jurisdiction of the Office of the General Comptroller of the Republic. This law and information on the National Oversight System is found on the website of the Comptroller's Office at: www.contaloria.gob.pe.

To some extent, the entire government and its officials must carry out the work of oversight with respect to that part of the State over which they have jurisdiction.

However, for purposes of the work that is the specific target of this responsibility, there are two primary institutions:

- The Congress of the Republic.
- The Office of the Comptroller General of the Republic.

THE OFFICE OF THE COMPTROLLER OF THE REPUBLIC.

The definition and tasks of the Controller's Office are provided in Article 82 of the Constitution, which states:

Article 82 of the Constitution: OFFICE OF THE GENERAL COMPTROLLER OF THE REPUBLIC.

"The Office of the General Comptroller of the Republic is a decentralized agency under public law that enjoys autonomy pursuant to its organic law. It is the senior body in the National Oversight System. It supervises the legality of the execution of the State Budget, public debt transactions and the actions of institutions subject to its control.

Congress appoints the Comptroller General at the suggestion of the Executive Branch for a period of seven years. He or she can be removed by the Congress for serious offense."

Article 101 of the Constitution: POWERS OF THE PERMANENT COMMISSION

"The members of the Permanent Commission of the Congress are chosen by the Congress. Their number tends to be in proportion to the number of representatives in each parliamentary group and does not exceed twenty-five percent of the total number of members of Congress.

The following are powers of the Permanent Commission:

1. Appoint the Comptroller General at the suggestion of the President of the Republic."

As can be seen, the Congress appoints the Comptroller for a period of 7 years. Thus, the changeover in this position does not in principle coincide with Presidential Elections and elections for the Legislative Branch. This measure tends to give the Comptroller a certain amount of operational autonomy.

The Comptroller also gets autonomy from the fact that he or she can only be removed for "serious offense." One does not have to be very astute to deduce that a Congress that holds an absolute majority and has autocratic leanings will be looking for any pretext to accuse of any Comptroller who shows independence and talent for oversight of "serious offense." However, in this situation, the true autonomy of the Office of the Comptroller owes more to the political maturity of the institutions than to the Law.

The purpose of Law No. 27785, the Organization Law on the National Oversight System and the Office of the Comptroller General of the Republic is to encourage the correct, timely and effective exercise of governmental control, to prevent and verify, through the application of principles, systems and technical procedures, the correct, efficient and transparent use and management of State resources and assets, the honest and upright development of the functions and actions of public authorities, officials and employees, as well as fulfillment of the goals and results obtained by the institutions subject to its control, with the goal of contributing to and guiding improvements in activities and services to the benefit of the Nation.

Agencies that, using their powers, allocate State resources and assets, including donations coming from cooperating foreign sources, to national or international non-governmental entities not subject to control, are required to inform the Office of the Comptroller General regarding the investment and its results, based on an ongoing evaluation that should be performed regarding those resources.

Government oversight consists of supervision, monitoring and verification of the acts and results of public administration, in terms of the degree of efficiency, effectiveness, transparency and economy in the use and allocation of State resources and assets, as well as compliance with legal standards and policy guidelines and action plans, evaluating administration, management and control systems, for the purpose of improvement through the adoption of relevant preventive and corrective actions.

Oversight is the system's essential tool, whereby technical staff of component agencies, through the application of standards, procedures and principles that regulate governmental oversight, carry out the objective and systematic verification and evaluation of the actions and results produced by the agency in the management and execution of institutional resources, assets and operations.

Oversight actions are carried out subject to the National Oversight Plan and the plans approved by each agency in the System in accordance with its schedule of activities and the requirements of the Office of the Comptroller General. Said plans must have the respective allocation of budget resources to carry them out, approved by the person responsible for the agency's budget envelope, and protected by the principle of confidentiality.

The oversight actions carried out by the agencies of the System will not be completed without giving the staff responsible and subject to oversight the opportunity to learn about and submit observations regarding the findings that apply to them, except in justifiable cases indicated in regulatory standards.

When the respective report identifies responsibilities, whether they are administrative, operational, civil or criminal in nature, the institutional authorities and those who are competent according to the Law shall immediately adopt actions to delineate operational and administrative responsibility and imposition of the respective penalty, and shall initiate before the corresponding jurisdiction, actions of a legal nature that correspond to the indicated responsibility.

Penalties are imposed by the Head of the agency and, with respect to him or her if applicable, by the senior agency or sector or the agency or sector called upon to do so by law.

Congress of the Republic.

According to Article 102 (2) of the Constitution, one of the powers of Congress is:

Article 102 of the Constitution: POWERS OF THE CONGRESS.

"The powers of the Congress are:

2. Ensure respect for the Constitution and the laws and to act as appropriate to enforce the responsibility of those who violate them."

It also highlights as primary the oversight role embodied in Article 97 of the Constitution. This role relates directly to the power to ensure that irregular actions are not taken within State institutions.

Article 97 of the Constitution: OVERSIGHT FUNCTION.

“The Congress may initiate investigations regarding any matter of public interest. When called, people must appear before the commissions charged with such investigations, with the same urgency as for judicial procedures.

In order to achieve their purposes, said commissions may have access to any information, which may involve lifting bank secrecy and tax confidentiality, except for information affecting private matters. The conclusions of such commissions are not binding on judicial bodies.”

As part of this oversight power, mention should also be made of Articles 99 and 100 of the Constitution, which refer to constitutional accusations and political preliminary hearings [i.e., hearings conducted by the Congress]. These are perhaps the most radical powers for ensuring compliance with the Law.

Article 99 of the Constitution: CONSTITUTIONAL ACCUSATION.

“It is the responsibility of the Standing Committee to accuse before Congress: the President of the Republic; members of Congress; Cabinet ministers; members of the Constitutional Court, the National Council of the Judiciary, the Supreme Court of Justice, Supreme Court prosecutors; the Public Defender and the Comptroller General of the Republic, for any violation of the Constitution or any crime committed while in office and for up to 5 years after they have left office.”

Article 100 of the Constitution: POLITICAL PRELIMINARY HEARING.

“It is the responsibility of the Congress, without the participation of members of the Standing Committee, to decide whether or not to suspend the accused official, declare him ineligible for public office for up to 10 years, or remove him from his office, any other responsibility notwithstanding.

During this process, the accused official has the right to defend himself and to have legal counsel when appearing before the Standing Committee and the Congress.

In the case of an accusatory resolution of a criminal nature, the Attorney General files a complaint with the Supreme Court within 5 days. The Criminal Supreme Court justice then initiates the respective probable cause hearing.

Acquittal by the Supreme Court restores the political rights of the accused.

The terms of the prosecutor’s report and the writ initiating the probable cause hearing may not go beyond or reduce the terms of the congressional charges.”

Clearly the Congress plays an important role with respect to oversight of the other agencies of the State, and two characteristics of this role should be highlighted:

While the Congress does not carry out administrative functions (i.e., does not carry out control operations regarding public matters) it is especially empowered to oversee the work of the other organs of the State.

It can clearly be seen that this separation of management tasks is shared with the Office of the Comptroller.

The Congress is the largest State body. In addition, its mandate comes directly from popular election. As a result, its representative nature comes from the Peruvian people as a whole, and this is the basis for the legitimacy of its oversight role.

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

Information on the National Oversight System is found on the website of the Office of the Comptroller at: www.contaloria.gob.pe.

CHAPTER FOUR

PARTICIPATION BY CIVIL SOCIETY (ARTICLE III, NUMBER 11)

1. General questions on the mechanisms for participation

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

The 1993 Constitution incorporates new rights not included in the 1970 Constitution. In addition to providing that anyone has the right to participate individually or collectively in the nation's political, economic, social and culture life, it enumerates the right to elect and be elected, the right to referendum, to legislative initiatives, to dismiss and remove all authorities, to demand a rendering of accounts and the right to neighborhood participation. Thus, Article 31 of the Constitution provides as follows:

Article 31 of the Constitution: CITIZEN PARTICIPATION IN PUBLIC AFFAIRS.

"Citizens have the right to participate in public matters through referendum; legislative initiative; removal or dismissal of authorities; and to demand a rendering of accounts. They also have the right to be elected and to freely elect their representatives, in accordance with the conditions and procedures determined by organic law.

It is the right and duty of residents to participate in the municipal government of their jurisdiction. The law governs and promotes direct and indirect mechanisms for their participation.

Citizens have the right to vote in the enjoyment of their civil power.

The vote is personal, equal, free and secret and voting is compulsory up to age seventy. It is optional after that age.

Any act that prohibits or limits a citizen's ability to exercise his or her rights is null and subject to punishment."

Law No. 26300 of May 3, 1994, called the Law on Citizen Participation and Control Rights, classifies citizen participation rights and citizen control rights in Articles 2 and 3, respectively, which state:

Article 2 of Law No. 26300:

"The following are citizen participation rights:

- a) Constitutional Reform Initiatives;
- b) Initiative in the preparation of laws;
- c) Referendum;
- d) Initiative in the preparation of municipal and regional measures; and,
- e) Other participatory mechanisms established by this law in the municipal and regional government arenas."

Article 3 of Law No. 26300:

“The following are citizen control rights:

- a) Revocation of Authorities,
- b) Removal of Authorities;
- c) Demand for a Rendering of Accounts; and,
- d) Other control mechanisms established by this law for the municipal and regional government arenas.”

Article 7 of Law No. 26300, with reference to the articles cited above, provides as follows:

Article 7 of Law No. 26300:

“The Citizen Participation and Control Rights referred to in paragraphs (d) and (e) of Article 2 and paragraph (d) of Article 3 of this law, as well as the referendum on municipal and regional provisions shall be regulated by organic laws governing matters relating to Local and Regional Governments. The Citizen Participation and Control Rights referred to in paragraphs (d) and (e) of Article 2 and paragraph (d) of Article 3 of this law, as well as the referendum on municipal and regional provisions shall be regulated by organic laws governing matters relating to Local and Regional Governments .” [sic]

In December 2003, the Office of the Comptroller General of the Republic, through Comptroller’s Office Resolution No. 443-32003-CG, created the “Service for the Processing of Complaints,” which establishes the provisions and procedures governing the submission and handling of citizen complaints submitted to the National Oversight System, which is attached as an annex and forms and integral part of this Resolution.”

The purpose of this service is to:

- Direct the proper and timely formulation, processing and evaluation of complaints that citizens submit to the Office of the Comptroller General of the Republic or the Institutional Oversight Bodies (*Órganos de Control Institucional* - OCIs) of the agencies covered by the National Oversight System.
- Promote and facilitate the participation of citizens in social oversight of public administration and the correct use of all State resources or assets, obtaining with their contribution a source of useful and reliable information for the planning, programming and execution of governmental oversight.

As provided in the articles of Comptroller’s Office Resolution No. 443-2003-CG, all citizens, individually or collectively, including officials and employees of the agencies included in the system, have the right to go directly to the Office of the Comptroller or the respective OCI in order to file complaints regarding the functions of public administration and they are entitled to have their complaints handled based on their merit, with submission submit to the requirements and processing established in this Directive. Complaints and suggestions from citizens, public officials or public servants may be submitted in writing, by mail or in person and orally at the central offices of the Office of the Comptroller. Complaints are processed free of charge.

This program is currently being revised by the Office of the Comptroller.

On September 26, 1996, the Metropolitan Municipality of Lima, through Ordinance No. 102, created the “Metropolitan Commission against Municipal Corruption,” and provided for the creation of similar commissions in the district municipalities. These commissions are attached to the Mayor’s office.

The functions of this “Metropolitan Commission against Municipal Corruption” are defined in Article 5 of the Ordinance, which states:

Ordinance No. 102, Article 5:

“The following are functions of the Metropolitan Commission against Corruption:

- 1) To receive and analyze complaints about corruption at the level of local governments in Lima, directing them according to their nature and importance to the appropriate and departments in accordance with the law.
- 2) To examine and advise local governments on the sources of corruption that are facilitating their own systems and to recommend ways to combat them.
- 3) To hold public hearings to analyze situations of administrative corruption, in order to make pertinent recommendations.
- 4) To present a report every six months that specifies the principle factors in administrative corruption, indicating the most common phenomena in corruption. The report, as in the case of the District Commissions, should be submitted to the Metropolitan Commission of Lima.
- 5) To conduct periodic surveys designed to determine the causes of administrative corruption, monitoring their results.
- 6) To submit proposals to the Metropolitan Council, in order to amend provisions that allow for or promote the occurrence of corrupt acts.
- 7) To coordinate with the City Council's Work Commissions so that they can carry out oversight functions.”

Unfortunately, there is no information on the operations of this Commission.

On December 7, 2000, Ministerial Resolution No. 297-2000-PROMUDEH created the Transparency Commission of the Ministry for the Promotion of Women and Human Development, as a body that would support the achievement of transparent management of programs and activities, facilitate the detection of all types of administrative corruption and collaborate in the implementation of a culture of responsible management.

Through Law No. 27658, the Framework Law on Modernization of State Management, the Peruvian State declared itself to be in the process of modernizing its various agencies, departments, entities, organizations and procedures.

The fundamental purpose of modernizing State management is to achieve greater levels of efficiency in the state apparatus, so that better service is provided to citizens, prioritizing and optimizing the use of public resources. The objective is to obtain a State that:

- a) Is in the service of its citizens.
- b) Has effective channels for citizen participation.
- c) Is decentralized and deconcentrated.
- d) Is transparent in its management.
- e) Has public servants who are qualified and adequately compensated.
- f) Is fiscally balanced.

The process of modernizing State management is fundamentally based on collaboration, with the participation of civil society and political forces, designing a shared vision and multi-year, strategic and sustainable plans.

Chapter III of the above-referenced Law, on the STATE'S RELATIONS WITH CITIZENS, provides in Article 8 that the State must promote and establish mechanisms to obtain adequate participatory democracy for its

citizens, through direct and indirect mechanisms of participation.

Citizens have the right to participate in the process of budgetary formulation, supervision, execution and control of State management, through mechanisms established by law.

Article 11 indicates the following obligations of State officials and employees:

- To give priority, in carrying out their functions, to satisfying the needs of the citizens.
- To provide citizens with impartial, timely, reliable, predictable and low-cost service.
- To provide requested information to citizens on a timely basis.
- To submit to ongoing citizen oversight with respect to both their public management and their private assets or activities.

Article 17 of the Framework Decentralization Law, Law No. 27783 on Citizen Participation, establishes that regional and local governments are required to promote citizen participation in formulation and consultation regarding their development plans and budgets, and in public management. To this end, they must guarantee that all citizens have access to public information, with the exceptions indicated in the law, as well as create and facilitate opportunities and mechanisms for consultation, collaboration, control, evaluation and rendering of accounts.

Without prejudice to the political rights accruing to all citizens under the Constitution and the law in this area, the participation of citizens is channeled through opportunities for consultation, coordination, collaboration and monitoring now in existence and that regional and local governments may establish in accordance with the law.

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

As we indicated before, the provisions cited have been inadequate for promoting citizen participation in public activities. However, we can point out that some entities of the State (such as the Ministry of the Interior, the Ministry on Women and Development, the Municipality of Barranco, the PROINVERSIÓN program (in charge of privatization of state assets), the National Office of Electoral Processes, etc.) have begun to invite civil organizations to monitor specific actions of public administration, primarily in connection with their most important procurement procedures.

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

There are mechanisms that are being implemented.

2. Mechanisms for access to information

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

Paragraph (5) of Article 2 of the Political Constitution of Peru recognizes the right of all people to seek, without indicating their reason, the information they require and to receive that information from any public agency, within the legal period and with the cost that such a request entails, with the exception of information affecting personal matters and information that is expressly excluded by law or for reasons of national security.

There are mechanisms whereby public agencies hand over information they have to anyone who requests it. The Political Constitution recognizes as a person's basic right the right to receive information – with pre-established costs and within a pre-established timeframe – with the exceptions of national security, personal matters, and other areas indicated in a law enacted by Congress. In addition, the Constitution establishes mechanisms for lifting tax confidentiality and banking secrecy.

Supreme Decree No. 018-2001- PCM provides that all agencies of public administration must incorporate in their Unified Body of Administrative Procedures (*Textos Únicos de Procedimientos Administrativos - TUPA*) a procedure providing access to information and establishing criteria for that access. For its part, Emergency Decree No. 035-200 provides that all public agencies must incorporate in their respective websites information on their budgets, finances and spending, as well as on their personnel. Some agencies have complied with this provision.

Finally, the Law on Transparency and Access to Public Information (Law No. 27806), published recently (August 3, 2002) requires all agencies of public administration to be governed by the principle of disclosure and also establishes that all procedures must be adapted for this purpose, as well as the types of information that are confidential in nature.

The Political Constitution of the State provides that anyone who feels that his or her right to receive information has been breached has the right to a habeas data action. In addition, action before an administrative law judge is available in order to challenge final administrative resolutions that restrict access to public information.

It should be pointed out that, in the case of habeas data actions, the body that has had the most audacious position in favor of the right to information has, paradoxically, not been the Judicial Branch per se, but rather the Constitutional Court, which is the last venue for hearing these suits and only when they are denied in the lower court.

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

From 1994 until 2000, Article 2, paragraph 5 of the Constitution did not yield many results. During that period, all legislative initiatives to regulate the right to information were set aside. Recently, since 2001, there have been initiatives to regulate the right.

As for transparency, during the transition government, the Ministry of Economy and Finance adopted the important initiative of publishing relevant information on public finances on its website, in accordance with the provisions of Emergency Decree No. 035-2001. Nonetheless, the website has not been updated.

In general, most public agencies have ignored the above-referenced Supreme Decree No. 018-2001 - PCM and Emergency Decree No. 035-2001.

The recently published Law on Access to Information gives government agencies 150 days, in the city of Lima, to adapt their provisions. In the provinces, the time allowed is up to three years. We are thus waiting to evaluate the results of promulgating the law.

We can note that the information on the use of public funds, as well as that relating to the decisions of government agencies from the entities requested, must be sought at the judicial headquarters.

The Office of the Public Defender has issued important reports and statistics on the matter, which can be reviewed on the website of that institution: www.ombudsman.gob.pe/informes. However, the information is updated only to the year 2001.

3. Mechanisms for consultation

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

Article 31 of the 1993 Political Constitution establishes that citizens are entitled to participate in public matters through referendum; legislative initiative, removal or revocation of authorities, and demand for a rendering of accounts. They also have the right to be elected and freely elect their representatives, in accordance with the conditions and procedures determined by organic law.

It is the right and duty of residents to participate in the municipal government of their jurisdiction. The law regulates and promotes direct and indirect mechanisms for their participation.

Article 32 states that the following can be submitted to referendum:

- 1.Total or partial reform of the Constitution;
- 2.Approval of provisions with the status of law;
- 3.Municipal ordinances; and
- 4.Matters relating to the decentralization process.

Suppression or reduction of the fundamental rights of the individual or tax and budgetary provisions, and international treaties in force cannot be submitted to referendum.

Article 37 of Law 26300, the Law on Citizen Participation and Control Rights, establishes that the referendum is the right of citizens to express their opinion pursuant to the Constitution regarding subjects on which they are consulted.

The referendum may be requested by no less than 10 percent of the national electorate.

A referendum is admissible in the following cases:

- a) Total or partial reform of the Constitution, in accordance with Article 206 thereof.
- b) For the approval of laws, regional provisions of a general nature and municipal ordinances.
- c) For the disapproval of laws, legislative decrees and emergency decrees, as well as the measures referred to in the preceding section.
- d) On matters referred to in Article 190 of the Constitution, according to special law.

The matters and provisions referred to in Article 32 of the Constitution cannot be submitted to referendum.

Article 8 of Law No. 27658, the Framework Law on Modernization of State Management on Participatory Democracy, establishes that the State must promote and establish the mechanisms for achieving adequate participatory democracy for citizens, through direct and indirect mechanisms of participation.

Number 17.2 of Article 17 of Law No. 27783, the Framework Law on Decentralization, establishes that without prejudice to the political rights accruing to all citizens in accordance with the Constitution and law on the subject, citizen participation is channeled through opportunities for consultation, coordination, collaboration and monitoring now in existence and those that regional and local governments may establish in accordance with the law.

b. Briefly state the results that have been obtained in implementing the above standards and

mechanisms, attaching the pertinent statistical information, if available.

Given the newness of the legislation, no objectives are being met as yet.

4. Mechanisms to encourage active participation in public administration

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

Article 9 of Law No. 27658, the Framework Law on Modernization of State Management on Citizen Control establishes that citizens have the right to participate in the process of budgetary formulation, supervision, execution and control of State management, through the mechanisms established by law.

Number 17.1 of Article 17 of Law No. 27783, the Framework Law on Decentralization, establishes that regional and local governments are required to promote citizen participation in formulation, discussion and consultation regarding their development plans and budgets and in public administration. To this end, they must guarantee that all citizens have access to public information, with the exceptions indicated in the law, as well as create and facilitate opportunities and mechanisms for consultation, collaboration, control, evaluation and rendering of accounts

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

Given the newness of the legislation, no objectives are being met as yet.

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

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

Article 9 of Law No. 27658, the Framework Law on Modernization of State Management on Citizen Control establishes that citizens have the right to participate in the processes of budgetary formulation, supervision, execution and control of State management, through the mechanisms established by law.

Article 11 establishes that the following are obligations of State workers and officials:

- To give priority, in carrying out their functions, to satisfying the needs of the citizens.
- To provide citizens with impartial, timely, reliable, predictable and low-cost service.
- To provide requested information to citizens on a timely basis.
- To submit to ongoing citizen oversight with respect to both their public management and their private assets or activities.

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

Given the newness of the legislation, no objectives are being met as yet.

CHAPTER FIVE

ASSISTANCE AND COOPERATION (ARTICLE XIV)

1. Mutual Assistance

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

There are no specific treaties, agreements or conventions on matters of corruption, but rather treaties on judicial assistance in criminal matters with various States.

Since it varies depending on each Convention or Agreement, this assistance includes in particular:

- a. Taking and submitting requested evidence and judicial proceedings.
- b. Submission of documents and information in accordance with the terms and conditions of the Convention.
- c. Notification of decisions, proceedings and rulings.
- d. Location and voluntary transfer of people for the purposes of the Conventions as witnesses or experts.
- e. Execution of expert appraisals, confiscations, seizures, attachments, freezing of assets, embargos, as well as identification or detection of the proceeds of assets or instruments used in the commission of a crime, on-site inspections and examinations.
- f. The State requested and the requesting State shall divide equally the assets subject to seizure or the proceeds of the sale thereof, provided there is effective collaboration between the two States.
- g. Facilitate the entry and freedom of movement in the territory of the requested State by officials of the requesting State, with prior authorization from the competent authorities of the requested State, in order to assist in the execution of proceedings described in the Conventions, provided the internal legal system of the requested State so permits.
- h. Any other assistance agreed to between the Parties.

Conventions, Treaties or Agreements include:

- Supreme Decree No. 029-96-RE ratified the "Convention on Judicial Assistance in Criminal Matters between the Republic of Peru and the Republic of El Salvador," signed in the city of Lima on June 13, 1996. In force as of 1/14/1997.
- Supreme Decree No. 24-94-RE ratified the "Convention between the Republic of Peru and the Republic of Colombia on Judicial Assistance in Criminal Matters," signed in the city of Lima on July 9, 1994. In force as of 11/13/1999.
- Supreme Decree No. 034-96-RE ratified the "Convention between the Republic of Peru and the Republic of Bolivia on Judicial Assistance in Criminal Matters," signed in the city of Lima on July 27, 1996. In force as of 1/5/1997.
- Supreme Decree No. 039-96-RE ratified the "Convention between the Republic of Peru and the Republic of Paraguay on Judicial Assistance in Criminal Matters," signed in the city of Asunción on August 7, 1996. In force as of 12/1/1997.
- Supreme Decree No. 048-96-RE ratified the "Treaty on Judicial Assistance in Criminal Matters between the Republic of Peru and the Republic of Italy," signed in the city of Rome on November 24, 1994. In force as of 10/1/1999.

- Supreme Decree No. 025-97-RE ratified the “Treaty on Judicial Assistance in Criminal Matters between the Republic of Peru and the Swiss Confederation,” signed in the city of Lima on April 21, 1997. In force as of 12/2/1998.
- Supreme Decree No. 031-2000-RE ratified the “Convention between the Republic of Peru and the United Mexican States on Legal Assistance in Criminal Matters,” signed in Mexico City on May 2, 2000. In force as of 3/1/2001.
- Supreme Decree No. 021-99-RE ratified the “Agreement between the Republic of Peru and the Republic of Argentina on Legal Assistance in Criminal Matters,” signed in the city of Lima on February 9, 1999. In force as of 3/1/2001.
- Supreme Decree No. 041-99-RE ratified the “Agreement between the Republic of Peru and the Republic of Guatemala on Legal Assistance in Criminal Matters,” signed in the city of Lima on April 16, 1998. Note RE(TRA) 6/32/7 of July 15, 1999 communicated to Guatemala that Peru had completed internal legal measures. Guatemala has not yet responded.
- Supreme Decree No. 059-99-RE ratified the “Treaty on Legal Assistance in Criminal Matters between the Republic of Peru and the Government of Canada,” signed in the city of Ottawa on October 27, 1998. In force as of 1/25/2000.
- Supreme Decree No. 042-99-RE ratified the “Treaty on Legal Assistance in Criminal Matters between the Republic of Peru and the Republic of Cuba,” signed in the city of Havana on February 15, 1999.
- Supreme Decree No. 058-99-RE ratified the “Treaty on Legal Assistance in Criminal Matters between the Republic of Peru and the Federal Republic of Brazil,” signed in the city of Lima on July 21, 1999. In force as of 8/25/2001.
- Supreme Decree No. 025-2001-RE ratified the “Treaty on Legal Assistance in Criminal Matters between the Republic of Peru and the Kingdom of Spain,” signed in the city of Madrid on November 8, 2000. In force as of 12/12/2001.
- “Agreement between the Republic of Peru and the Dominican Republic on Legal Assistance in Criminal Matters,” signed in the city of Santo Domingo on March 15, 2002.
- “Reciprocal Convention between the Republic of Peru and the Republic of Panama (deals with judicial cooperation),” signed in Panama City on December 13, 1985. In force as of 12/13/1985.

In addition, Extradition treaties have been signed with various States:

- EXTRADITION TREATY WITH THE UNITED STATES

Signed in Lima on July 25, 2001..

Approved by Legislative Resolution No. 27827 of August 22, 2002.

In force since August 25, 2003.

Registry No. B-2794.

- TREATY ON EXTRADITION OF CRIMINALS WITH BRAZIL

Signed in Rio de Janeiro on February 13, 1919.

Approved by Legislative Resolution No. 4462 of January 7, 1921, promulgated January 9, 1921.

Ratifying instruments were exchanged in Lima on May 22, 1922.

In force since May 22, 1922.

Registry No. B-324.

- **EXTRADITION TREATY WITH CHILE**

Signed in Lima on November 5, 1932.
 Approved by Legislative Resolution No. 8374 of June 16, 1936.
 Ratifying instruments were exchanged in Lima on July 15, 1936.
 In force since July 15, 1936.
 Registry No. B-374.

- **AGREEMENT ON EXTRADITION BETWEEN THE REPUBLIC OF PERU AND THE GOVERNMENT OF THE COMMUNITY OF THE BAHAMAS**

Exchange of Memos between the Ministries of Foreign Relations of the Community of the Bahamas No. EXT/133/33 of March 7, 1978 and Peru No. (Lt) 6/2 of August 2, 1978.

In force as of August 14, 1978 (date of Note No. 7-1-0/53 of the Permanent Mission of Peru to the United Nations, communicating acceptance by the Peruvian Government).

Registry No. B-1244.

- **EXTRADITION TREATY BETWEEN THE REPUBLIC OF PERU AND THE GOVERNMENT OF THE UNITED MEXICAN STATES**

Signed in Mexico City on May 12, 2000.

Approved by the Peruvian Congress through Legislative Resolution No. 27428 of February 22, 2001; Ratified by Supreme Decree No. 017-2001-RE of March 5, 2001. The Mexican Government approved it through Decree of December 29, 2001.

In force since April 10, 2001.

Published in the Official Gazette, "El Peruano" of February 23, 2001.

Registry No. B-2704-C.

EXTRADITION TREATY WITH FRANCE

Signed in Paris on September 30, 1874.
 Approved by Congress through Legislative Resolution of June 8, 1875, promulgated on June 15, 1875.
 Ratifying instruments were exchanged in Paris on January 19, 1876.
 In force since January 19, 1876.
 Registry No. B-159.

EXTRADITION TREATY AND STATEMENT REGARDING BELGIUM

Signed in Brussels on November 23, 1888.
 Approved by Legislative Resolution of October 25, 1889, promulgated on November 4, 1889.
 Ratifying instruments were exchanged in Brussels on August 23, 1890.
 In force since October 23, 1890.
 Expanded through Exchange of Notes between the Embassy of Belgium and the Chancellery, dated August 28 and 29 of 1961 (Expanding Article II).
 Registry No. B-201

EXTRADITION TREATY WITH GREAT BRITAIN.

Signed in Lima on January 26, 1904.

Approved by Legislative Resolution No. 226 of September 29, 1906.

Ratifying instruments were exchange in Lima on November 30, 1906.

In force since May 20, 1907.

Registry No. B-262.

EXTRADITION TREATY WITH GREAT BRITAIN OF 1904 APPLICABLE TO CANADA AS MEMBER OF THE BRITISH COMMONWEALTH OF NATIONS.

Signed in Lima on January 26, 1904.

By decision of the Canadian Government to keep in effect all Treaties of the Empire that have not been abrogated by Canada.

Registry No. B-262-A.

EXPANSION OF THE EXTRADITION TREATMENT OF 1904 WITH GREAT BRITAIN APPLICABLE TO THE TERRITORIES UNDER BRITISH MANDATE: PALESTINE, (EXCLUDING TRANSJORDAN), CAMEROON (BRITISH SPHERE), TANGANYIKA, NEW GUINEA, WESTERN SAMOA, WEST AFRICA, NAURU.

Exchange of Memos between the Peruvian Ministry of Foreign Relations and the British Legation in Lima, dated December 26, 1927 and January 16, 1928.

In force since January 16, 1928.

Registry No. B-352.

AGREEMENT ON EXTENSION OF THE EXTRADITION TREATY OF 1904 WITH GREAT BRITAIN TO THE PROTECTORATES OF ZANZIBAR AND THE BRITISH SOLOMON ISLANDS.

Exchange of Memos between the British Legation and the Peruvian Ministry of Foreign Relations dated March 5 and 17, 1937.

Approved by Supreme Resolution No. 223 of March 24, 1937.

Took effect March 17, 1937.

Registry No. B-428.

EXPANSION OF THE EXTRADITION CONVENTION OF NOVEMBER 23, 1888 WITH BELGIUM (EXPANDING ARTICLE II).

Exchange of Memos between the Embassy of Belgium and the Ministry of Foreign Relations dated May 7 and July 2, 1958.

Approved by Legislative Resolution No. 13465 of November 19, 1960, promulgated on November 19, 1960.

Through Exchange of Memos between the Embassy of Peru in Brussels and the Belgium Ministry of Foreign Relations dated August 28 and 29, 1961 the effective date of that extension was established.

In effect since August 29, 1961.

Registry No. B-651.

AGREEMENT TO CONTINUE APPLYING THE EXTRADITION TREATY SIGNED BETWEEN PERU AND GREAT BRITAIN ON JANUARY 26, 1904 TO THE REPUBLIC OF KENYA.

Exchange of Memos between the Ministry of Foreign Affairs of Kenya and the Ministry of Foreign Relations of Peru dated May 15 and June 19, 1965. In force since June 19, 1965.

Registry No. B-806.

EXTRADITION TREATY BETWEEN THE REPUBLICS OF PERU AND MALAWI TO APPLY TO THE LATTER COUNTRY THE EXTRADITION TREATY OF 1904 WITH GREAT BRITAIN AND ITS 1927 AND 1938 EXPANSIONS.

Exchange of Memos between the Ministry of Foreign Relations of Malawi and the Ministry of Foreign Relations of Peru dated August 9 and September 6, 1967.

In force since September 6, 1967.

Registry No. B-839-A.

AGREEMENT WHEREBY PERU REMAINS A PART TO THE EXTRADITION TREATY WITH ENGLAND OF JANUARY 26, 1904.

Exchange of Memos dated July 14, 1972 and May 31, 1973.

In force since May 31, 1973.

Registry No. B-1016-D.

EXTRADITION TREATY BETWEEN THE REPUBLIC OF PERU AND THE KINGDOM OF SPAIN.

Signed in Madrid on June 28, 1989.

Approved by Legislation Resolution No. 25347 of October 31, 1991. Approval was communicated to the Embassy of Spain in Lima through Memo dated November 21, 1991. Spain communicated its approval through Memo of November 26, 1990.

Ratifying instruments were exchange in Lima on December 17, 1993.

In force since January 31, 1994.

Registry No. B-1813.

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF PERU AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA ON EXTRADITION FOR THE CRIME OF ILLEGAL TRAFFICKING OF NARCOTICS AND PSYCHOTROPIC SUBSTANCES.

Exchange of Memos between the Secretary of the United States Department of State and the Chancellor of Government of Peru, in the city of Cartagena, Colombia on February 15, 1990.

Approved through Supreme Decree No. 012-96-RE of April 19, 1996.

In force since February 15, 1990.

Registry N° B-1858.

EXTRADITION TREATY BETWEEN THE GOVERNMENT OF THE REPUBLIC OF PERU AND THE GOVERNMENT OF THE REPUBLIC OF ITALY

Signed in Roma on November 24, 1994.

Approved by Legislation Resolution No. 26759 of March 6, 1997. Ratified through Supreme Decree No. 011-97-RE of March 21, 1997. Shall take effect upon the exchange of ratifying instruments (Article 19, item 2).

Registry No. 8-2206-C.

EXTRADITION TREATY BETWEEN THE GOVERNMENT OF THE REPUBLIC OF PERU AND THE GOVERNMENT OF THE REPUBLIC OF PARAGUAY.

Signed in Lima on October 17, 1997,

Shall take effect when the conditions of Article 18 (2) of the Treaty are met.

Registry No. B-2461.

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF PERU AND THE GOVERNMENT OF THE REPUBLIC OF COLOMBIA ON THE "TERM OF DISTANCE" SPECIFIED IN THE BOLIVARIAN AGREEMENT ON EXTRADITION OF 1911, IN EFFECT BETWEEN THE GOVERNMENTS OF PERU AND COLOMBIA.

Exchange of Memos in Bogotá and Lima on February 24, 1998. Ratified through Supreme Decree No. 027 -98-RE of October 1, 1998.

In force since February 24, 1998.

Registry No. B-2489-E.

EXTRADITION TREATY WITH THE REPUBLIC OF ECUADOR.

Signed in Quito on April 4, 2001, approved by Legislative Resolution No. 27582 of December 5, 2001, ratified through Supreme Decree No. 099-2001-RE of December 20, 2001

Approved by the Republic of Ecuador through Legislative Provision of August 6, 2002

In force as of December 12, 2002.

Registry B-2769

EXTRADITION TREATY WITH THE PEOPLES REPUBLIC OF CHINA.

Signed in Beijing on November 5, 2001

Approved through Legislative Resolution No. 27732 of May 24, 2002, ratified through Supreme Decree No. 055-2002-RE of June 13, 2002

In force for both countries as of April 3, 2003 and published in the Official Gazette, "El Peruano," on April 10, 2003.

Registry No. B-2815

EXTRADITION TREATY WITH THE REPUBLIC OF COSTA RICA

Signed in San José on January 14, 2002.

Approved through Legislative Resolution No. 27828 of September 17, 2002, ratified through Supreme Decree No. 084-2002-RE of October 10, 2002.

In force when conditions provided in Article 19 (1) of the Treaty are met.

Registry No. 2828

LIST OF MULTILATERAL AGREEMENTS ON EXTRADITION IN EFFECT FOR PERU

1. **TREATY OF INTERNATIONAL CRIMINAL LAW**, signed during the International South-American Conference of Montevideo in 1889.

Signed in Montevideo on January 23, 1889.

Approved by Legislative Resolution of October 25, 1889.

Accepted on May 16, 1890.

Renounced on May 4, 1955. Renunciation withdrawn on August 27, 1956

Signatory countries that retain it in force: Peru (*), Argentina, Bolivia, Paraguay and Uruguay

Registry No. M-032.

2. **AGREEMENT ON EXTRADITION** (Bolivarian Congress of Caracas).

Signed in Caracas on July 16, 1911.

Approved by Legislative Resolution No. 2154 of October 22, 1915. Ratifying instrument deposited December 22, 1915.

Signatory countries: Bolivia, Colombia, Ecuador, Peru and Venezuela. Currently in effect only with Colombia (*) as it has been replaced with respect to the other signatories, by the provisions of the

Convention on International Private Law (Bustamante Code), signed at the Pan-American Conference of Havana that Colombia has not ratified.

AMENDMENT: Interpretive Agreement, Signed in Quito in 1933.

AMENDMENT: Agreement on the "TERM OF DISTANCE," specified in the Bolivarian Agreement on Extradition, through Exchange of Memos, Colombian Memo No. DM/OJ.009571 and Peruvian Memo No. RE N° 6/17 of February 24, 1998, respectively.

Registry No. M-102.

3. CONVENCION ON PRIVATE INTERNATIONAL LAW (Bustamante Code) (Sixth International Conference of American States).

Signed in Havana on February 20, 1928.

Approved by Legislative Resolution No. 6442 of December 31, 1928. Ratifying instrument deposited on August 19, 1929.

In force since September 18, 1929 (per Art. IV of the Convention). Signatory countries that have ratified it: Bolivia (R) (*), Brazil (R), Costa Rica (R), Cuba, Chile (R), Ecuador (R) (*), el Salvador (R), Guatemala, Haiti (R), Honduras, Nicaragua, Panama, Peru (*), Dominican Republic (R) and Venezuela (R) (*)
Registry No. M-167.

(*) Andean Community Countries.

(R) Ratified with reservations.

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

Not within the framework of the Convention.

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

It has not been possible as yet to establish the Multilateral Commission, with representatives from the entities involved, in order to comply with the relevant article of the Convention, as work is continuing on the commission's definition and structure.

2. Mutual technical cooperation

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

Legislative Decree No. 719 promulgates the International Technical Cooperation Law, establishing general provisions governing the international technical cooperation provided through State agencies and that comes from foreign sources of a public and/or private nature. However, there is no specific law on technical

cooperation on matters of corruption but rather a framework law that covers the most effective ways and means to prevent, detect, investigate and punish acts of corruption.

It is the responsibility of the Peruvian State to ensure that Agreements, Conventions and other legal instruments relating to international technical cooperation with foreign governments, international organizations and institutions are entered into in accordance with national legal standards.

International technical cooperation is the means whereby Peru receives, transfers and/or exchanges human resources, assets, services, capital and technology from foreign cooperating sources the objective of which is to supplement and contribute to national efforts in the area of development, intended to:

- a) Support the conduct of priority activities and projects for the development of the country and its regions, particularly in extremely poor and marginalized socioeconomic areas;
- b) Acquire scientific and technological knowledge for adaptation and application in Peru and to help foreigners acquire national scientific and technological knowledge;
- c) Provide technical, scientific and cultural preparation to Peruvians in the country or abroad and to foreigners in Peru.

International technical cooperation is channeled through public sector agencies at their central, regional and local levels, as well as through (officially recognized) private sector organizations.

The Ministry of Foreign Relations, which is competent to handle and approve Peru's international technical cooperation with foreign governments and international agencies, identifies and commits Peru's technical cooperation capabilities and offers and provides technical cooperation abroad. It signs and enters into cooperation agreements.

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

No.

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

Legislative Decree No. 719 promulgates the Law on International Technical Cooperation.

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

Office of the Comptroller's Resolution No. 172-2001-CG dated 10/10/2001 approves the Convention signed with USAID/OTI to carry out the project "Public and citizen control in combating corruption," providing cooperation through the "in-kind" (non-cash) donation mechanism to implement the project.

Ministerial Resolution No.144-2001-EF-10 approved the Transparency and Reform Project on Fiscal, Social and Justice Policies in the context of the sectoral program referred to in Supreme Decree No. 068-2001-EF, which is financed with funds from the Inter-American Development Bank through the Technical Assistance Fund under IBD Loan Contract No. 985/OC-PE, IBD Technical Cooperation Loan No. 1236/OC-PE and the State Treasury.

Supreme Resolution No. 160-2001-JUS dated 4/11/2001 approves the National Anti-Corruption Program under the Ministry of Justice for the purpose of executing a work plan to diagnose and design policies to combat corruption, the details of which appear in the books: a) Working Documents: Diagnosis of

Corruption and Vulnerable Areas, World Bank Report and Report on Regional Forums (Summary) and b) A Peru without Corruption: Conditions, Guidelines and Recommendations for Combating Corruption.

Supreme Resolution No. 054-2002-JUS approves the Convention signed with the UNDP to execute Project PER 02/003 "Anticorruption Prosecutors' Officers," within the Ministry of Justice.

- In addition, Supreme Resolution No. 236-2002-PCM approved Convention PER/02/021 "Support for the National Commission to Combat Corruption and Promote Ethics and Transparency in Public Administration" dated June 11, 2002.
- AGREEMENT OF THE PRESIDENTS OF PERU AND COSTA RICA TO STRENGTHEN DEMOCRACY AND COMBAT CORRUPTION AND IMPUNITY, signed in Lima on November 13, 2003.
- MEMORANDUM OF UNDERSTANDING BETWEEN THE MINISTRY OF FOREIGN RELATIONS OF PERU, REPRESENTING THE FINANCIAL INTELLIGENCE UNIT (FIU) – PERU AND THE MINISTRY OF FOREIGN RELATIONS OF PANAMA, REPRESENTING THE FINANCIAL ANALYSIS UNIT FOR THE PREVENTION OF MONEY LAUNDERING AND TERRORISM FINANCING (FAU) OF THE REPUBLIC OF PANAMA, ON COOPERATING IN THE EXCHANGE OF FINANCIAL INFORMATION ON MONEY LAUNDERING, signed in Lima on September 8, 2003.
- MEMORANDUM OF UNDERSTANDING FOR TECHNICAL ASSISTANCE IN COMBATING CORRUPTION AND ORGANIZED CRIME SIGNED BETWEEN THE GOVERNMENT OF THE REPUBLIC OF PERU AND THE UNITED NATIONS OFFICE ON DRUGS AND CRIME signed in Lima on January 28, 2003.

CHAPTER SIX

CENTRAL AUTHORITIES (ARTICLE XVIII)

1. Designation of Central Authorities

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

No.

However, in the absence of a central authority, requests go through diplomatic channels.

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

No.

However, in the absence of a central authority, the Peruvian Agency for International Cooperation (*Agencia Peruana de Cooperación Internacional* – APCI), created by Law No. 27692, is the lead agency for international technical cooperation and is responsible for conducting, planning, organizing and supervising non-reimbursable international cooperation, based on national development policy in the context of legal provisions governing international technical cooperation.

c. If your country has designated a central authority or central authorities please provide the necessary contact data, including the name of the agency(ies) and the responsible official(s), the position that he or she occupies, telephone and fax numbers, and e-mail address(es).

It has not.

d. If no central authority or authorities have been designated, briefly indicate how your State will implement the obligation, in accordance with Article XIV (2) of the Convention.

Under consultation.

2. Operation of Central Authorities

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

Pending.

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

Yes, the Peruvian Ministry of Foreign Relations has up to March 2004 been the channel for 125 letters rogatory to a State Party in proceedings against former officials of the previous regime for various crimes against public administration (particularly the crime of illicit enrichment) based on presumed acts of corruption. Of those requests, 40% are letters rogatory prepared by the Office of the Attorney General – Prosecutor's Office and 60% were prepared by the Judicial Branch.

Of the letters rogatory sent to those countries invoking the Convention as the legal basis, 40% of the letters rogatory have been declared not viable, 30% have been declared viable, and 30% are in process. The largest number of rejected letters interrogatory are those seeking the lifting of bank secrecy. Unfortunately, that State declared the request not viable since the Peruvian authorities did not provide sufficient information to locate and block the accounts.

The amount of time it takes a requested State to process a request from Peruvian justice is acceptable considering that more time is needed in the case of States that are not members of the Convention.

Peruvian justice has asked one of the States Party to the Convention, among other measures (obtaining of witness statements, documents), to lift bank secrecy regarding accounts, movement of accounts, bank certificates, freezing of funds, as well as information on the incorporation of companies and their shareholders, invoking the Convention as the legal basis, and these have been denied or declared partially viable by that State's judicial authorities.

The argument made by that State Party is that although its country has ratified the Convention and has incorporated it in its domestic law, it must apply the Convention in accordance with domestic law in order to provide judicial assistance to Peru.

As for the lifting of bank secrecy, that State invokes its internal law to assign a relative nature to banking secrecy.

Another reason for denying the Peruvian requests to lift banking secrecy is based on the different assessment of the evidence submitted to demonstrate the relationship existing between the Bank, the accused and the ties to companies under investigation.

Peru has not received, at least through diplomatic channels, requests for international judicial assistance by States Parties to the Convention, for acts of corruption in which that instrument is invoked

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

Please fill in the following information:

(a) State Party: Republic of Peru

(b) The official to be consulted regarding the responses to the questionnaire is:

Dr. César Landra Arroyo

Title/position: Vice Minister of Justice

Agency/Office: Ministry of Justice

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