



MECHANISM FOR FOLLOW-UP ON THE  
IMPLEMENTATION OF THE INTER-AMERICAN  
CONVENTION AGAINST CORRUPTION  
Forty-First Meeting of the Committee of Experts  
March 11 - 14, 2024  
Washington, D.C.

OEA/Ser.L.  
SG/MESICIC/doc.652/23 rev.4  
March 11, 2024  
Original: English

UNITED STATES OF AMERICA

FINAL REPORT

(Adopted at the March 14, 2024 plenary session)

## SUMMARY

This Report contains comprehensive review of the implementation in the United States of Article XVI of the Inter-American Convention against Corruption, on bank secrecy, which was selected by the Committee of Experts of the MESICIC for the Sixth Round. The Report also includes a comprehensive review of the implementation of the recommendations formulated to the United States in the Third Round, which refer respectively to: denial or prevention of favorable tax treatment for expenditures made in violation of anticorruption laws (Article III, paragraph 7 of the Convention); prevention of bribery of domestic and foreign government officials (Article III, paragraph 10 of the Convention); and transnational bribery (Article VIII of the Convention).

The review was conducted in accordance with the Convention, the Report of Buenos Aires, the Committee's Rules of Procedure, and the Methodologies adopted for conducting on-site visits and for the Sixth Round, including the criteria set out therein for guiding the review based on equal treatment for all States Parties, functional equivalence, and the common purpose of both the Convention and the MESICIC of promoting, facilitating, and strengthening cooperation among the States Parties in the prevention, detection, punishment, and eradication of corruption.

The review was carried out mainly taking into account the Response to the Questionnaire by the United States and information gathered during the on-site visit conducted between October 18 – 20, 2023, by representatives of Saint Lucia and The Bahamas, with the support of the Technical Secretariat. During that visit, the information furnished by the United States was clarified and supplemented with the opinions of civil society organizations.

With regard to the implementation of the recommendations that were formulated to the United States in the Report of the Third Round, based on the Methodology for the Sixth Round and bearing in mind the information provided in the Response to the Questionnaire and during the virtual on-site visit, the Committee made a determination as to which of those recommendations have been satisfactorily implemented, which require additional attention, which need to be reformulated, and which are no longer valid.

With respect to the **denial or prevention of favorable tax treatment for expenditures made in violation of anticorruption laws**, it is pertinent to highlight that measures such as manuals, guidelines or directive to guide those reviewing applications to receive tax benefits; and computer programs that facilitate data consultation; have been established for detecting sums paid for acts of corruption. With respect to the **prevention of bribery and domestic and foreign public officials**, it is pertinent to highlight that computer programs are being utilized to provide easy access to information for verifying the veracity of accounting records. With respect to **transnational bribery**, it is pertinent to highlight the periodical review of the policies and approach on facilitation payments.

Some of the recommendations formulated in the Third Round that remain valid or have been reformulated address issues such as: consider continuing to make efforts to ensure that facilitation payments do not receive favorable tax treatment, taking into consideration that these payments are not criminalized in the country under review; require tax examiners to receive mandatory training that raises awareness regarding their role in combating corruption, such as bribery, in order to facilitate the possibility of referrals being made to the IRS Criminal Division on the matter; and consider adopting, through the means it deems appropriate, any additional measures that might be beneficial, to further promote that professional confidentiality is not an obstacle for private sector auditors whose activities are governed by the AICPA and its Code of Conduct to bring to the attention of the appropriate authorities any acts of corruption of which they become aware in the performance of their duties.

In addition, regarding new developments in the United States with respect to the implementation of the provisions of the Convention selected for the Third Round, the Committee formulated recommendations, such as consider taking the legislative steps to remove the facilitation payment exception in the Foreign Corrupt Practices Act.

For the review of the provision selected in the Sixth Round that refer to **bank secrecy**, some of the recommendations made to the United States for its consideration focus on: routinely evaluate practices used to ensure that banking information received by the United States is only used for the purpose for which the information was requested; and regularly evaluate if existing policies and practices allow for processing and responding to requests for assistance by another State Party for banking information related to an act of corruption in a timely manner.

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

## FINAL REPORT ON FOLLOW-UP ON IMPLEMENTATION IN THE UNITED STATES OF THE RECOMMENDATIONS FORMULATED AND PROVISIONS REVIEWED IN THE THIRD ROUND, AND ON THE PROVISION OF THE CONVENTION SELECTED FOR REVIEW IN THE SIXTH ROUND<sup>1</sup>

### INTRODUCTION

#### 1. Content of the Report.

[1] As decided by the Committee of Experts (hereinafter “Committee”) of the Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC) at its Thirty-Fourth Meeting of the Committee of Experts,<sup>2</sup> this Report will first refer to follow up on implementation of the recommendations formulated to the United States in the Report of the Third Round<sup>3</sup>

[2] Second, where applicable, it will refer to new developments in the United States regarding the provisions of the Inter-American Convention against Corruption (hereinafter “Convention”) selected for the Third Round, and regarding such matters as the legal framework, technological developments, and results, and, if applicable, appropriate observations and recommendations will be formulated.

[3] Third, it will address implementation of the Convention provisions selected by the Committee of Experts of the Mechanism for the Follow-up of Implementation of the same (MESICIC) for the Sixth Round of review. That provision corresponds to Article XVI of the Convention on Bank Secrecy, which reads: “1. *The Requested State shall not invoke bank secrecy as a basis for refusal to provide the assistance sought by the Requesting State. The Requested State shall apply this article in accordance with its domestic law, its procedural provisions, or bilateral or multilateral agreements with the Requesting State.* 2. *The Requesting State shall be obligated not to use any information received that is protected by bank secrecy for any purpose other than the proceeding for which that information was requested, unless authorized by the Requested State.*”

[4] Fourth, it will refer to best practices, where applicable, that the country under review has wished to voluntarily share regarding implementation of the Convention provisions selected for the Third and Sixth Rounds.

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

[5] According to the official registry of the OAS General Secretariat, the United States ratified the InterAmerican Convention against Corruption (IACC) on September 15, 2000, and deposited the respective instrument of ratification on September 29, 2000.

---

<sup>1</sup> This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on March 14, 2024, at its Forty-First Meeting, held at OAS Headquarters, March 11 – 14, 2024.

<sup>2</sup> See the Minutes of the 34th Meeting of the Committee, available at: [http://www.oas.org/en/sla/dlc/mesicic/docs/34reunion\\_acta\\_ing.pdf](http://www.oas.org/en/sla/dlc/mesicic/docs/34reunion_acta_ing.pdf)

<sup>3</sup> Report on Implementation in the United States of the Convention Provisions Selected for Review in the Third Round, and on Follow-Up to the Recommendations Formulated to that Country in Previous Rounds, [http://www.oas.org/en/sla/dlc/mesicic/docs/mesicic3\\_usa\\_rep.pdf](http://www.oas.org/en/sla/dlc/mesicic/docs/mesicic3_usa_rep.pdf)

[6] Similarly, the United States signed the Declaration on the Mechanism for Follow-Up of Implementation of the IACC on June 4, 2001, during a regular session of the OAS General Assembly held in San José, Costa Rica.

## **I. SUMMARY OF INFORMATION RECEIVED.**

### **1. Response of the United States.**

[7] The Committee wishes to acknowledge the cooperation that it received throughout the review process from the United States, and in particular, from the Bureau of International Narcotics and Law Enforcement Affairs of the United States Department of State, which was evidenced, *inter alia*, in the Response to the Questionnaire and in the constant willingness to clarify or complete its contents. Together with its Response, the United States sent the provisions and documents it considered pertinent.<sup>4</sup>

[8] The Committee also notes that the United States gave its consent for an on-site visit, in accordance with item 5 of the *Methodology for Conducting On-Site Visits*.<sup>5</sup> As members of the preliminary review subgroup, the representatives of Saint Lucia and The Bahamas conducted the on-site visit from October 18 – 20, 2023, with the support of the MESICIC Technical Secretariat. The information obtained during that visit is included in the appropriate sections of this Report, and the agenda of meetings is attached hereto, in keeping with provision 34 of the above-mentioned *Methodology*.

[9] For its review, the Committee took into account the information provided by the United States until October 20, 2023; which was requested by the Secretariat and by the members of the review subgroup to carry out their functions in keeping with the Rules of Procedure and Other Provisions;<sup>6</sup> the Methodology for Review of the Implementation of the Recommendations Formulated and the Provisions Examined in the Third Round and the Provisions selected for the Sixth Round;<sup>7</sup> and the Methodology for Conducting On-Site Visits.

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

[10] The Committee did not receive documents from civil society organizations within the time frame established in the schedule for the Sixth Round, as envisaged by Article 34(b) of the Committee's Rules of Procedure.

[11] Nonetheless, during the course of the on-site visit, information was gathered from civil society and private sector organizations; professional associations; and academics invited to participate in meetings to that end, pursuant to Article 27 of the *Methodology for Conducting On-site Visits*. A list of those persons is included in the agenda for the visit, which is appended hereto. Pertinent parts of this information are reflected in the appropriate sections of this report.

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

---

<sup>4</sup> Available at: <http://www.oas.org/en/sla/dlc/mesicic/paises-rondas.html?c=United%20States&r=6>

<sup>5</sup> Available at: [http://www.oas.org/juridico/english/met\\_onsite.pdf](http://www.oas.org/juridico/english/met_onsite.pdf)

<sup>6</sup> Available at: [http://www.oas.org/juridico/english/mesicic\\_rules.pdf](http://www.oas.org/juridico/english/mesicic_rules.pdf)

<sup>7</sup> Available at: [https://www.oas.org/en/sla/dlc/mesicic/docs/mesicic6\\_metodologia\\_ing.pdf](https://www.oas.org/en/sla/dlc/mesicic/docs/mesicic6_metodologia_ing.pdf)

[12] First, the Committee will discuss progress, information, and new developments in the United States in relation to the implementation of the recommendations formulated to them and the measures suggested to them by the Committee for implementation in the Report from the Third Round,<sup>8</sup> and it will proceed to take note of those that received satisfactory treatment and those that require attention by the country under review. In addition, where appropriate, it will address the continued validity of those recommendations and, as applicable, restate or reformulate them, pursuant to the provisions of Section V of the Methodology adopted by the Committee for the Sixth Round.

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

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

## **1. DENIAL OR PREVENTION OF FAVORABLE TAX TREATMENT FOR EXPENDITURES MADE IN VIOLATION OF ANTICORRUPTION LAWS (ARTICLE III (7) OF THE CONVENTION).<sup>9</sup>**

### **1.1. Follow-Up to the Implementation of the Recommendations Formulated in the Third Round.**

Recommendation suggested by the Committee:

*Strengthen the standards and measures for the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws.*

Measure (a):

*Consider continuing to make efforts to ensure that facilitation payments do not receive favorable tax treatment, taking into consideration that these payments are not criminalized in the country under review.*

[15] With respect to the aforementioned measure, in its Response, the country under review presented information that it considers pertinent:<sup>10</sup>

[16] In this respect, the country under review notes that the Foreign Corrupt Practices Act (FCPA) contains an exception for facilitating or expediting payments made in furtherance of routine governmental action, examples of which include the processing of visas, providing police protection or mail service, and supplying utilities.<sup>11</sup>

[17] The country under review further notes that section 162(c)(1) of the Internal Revenue Code explicitly disallows the tax deductibility of expenditures made in violation of the anti-corruption laws of the United States for all tax purposes, and thus any US taxpayer who makes a payment that is an illegal

---

<sup>8</sup> See Report of the Third Round, *supra* note 3.

<sup>9</sup> For purposes of this Report, the MESICIC Committee of Experts defines favorable tax treatment as all exemptions and any deductible items used for the purposes of determining the income tax base, and other treatment that gives rise to favorable reductions in the amount of tax payable by taxpayers.

<sup>10</sup> Response of the United States to the Sixth Round Questionnaire, pgs. 7 – 9, available at: [http://www.oas.org/en/sla/dlc/mesicic/docs/mesicic6\\_us\\_response\\_annex.pdf](http://www.oas.org/en/sla/dlc/mesicic/docs/mesicic6_us_response_annex.pdf)

<sup>11</sup> *Ibid.*, pg. 8.

payment under the FCPA is prohibited from deducting that payment under that provision of the aforementioned Code.<sup>12</sup>

[18] In addition, the country under review notes that the FCPA exception that permits facilitation payments to foreign government officials is very limited in scope and as a practical matter largely has been eliminated by risk averse corporate practices. It was also observed, as noted in the Response to the Questionnaire, that if a facilitation payment is carried out, it would have to be recorded in the books and records of the company and be well justified, because of the risk of violating the FCPA exception's limited scope.<sup>13</sup>

[19] The Committee observes that while any payment that is illegal under the FCPA cannot receive favorable tax treatment, facilitation payments continue to be allowed to be deducted, given that they are an exception found in the Act.

[20] In this respect, the Committee notes the observation made on this issue in the Report of the Third Round:<sup>14</sup>

[21] “[T]he Committee notes that facilitation payments are generally considered an illegal bribe in the countries in which they are paid. In a similar sense, the Committee notes that the principal domestic bribery statute in the country under review, 18 U.S.C. Section 201, which was examined in the Report on the United States for Second Round of Review, contains no such exception for facilitation or expediting payments made to domestic government officials or employees.

[22] *In view of the foregoing and taking into consideration that facilitation payments are not criminalized in the country under review, the Committee believes that the United States could consider continuing to make efforts to ensure that these payments do not receive favorable tax treatment.”*

[23] Given the foregoing, the Committee reiterates the recommendation, as well as the need for the country under review to give additional attention thereto. (See Recommendation 1.4.1 in section 1.4 of Chapter II of this Report)

#### Measure (b)

*Continue to use, and consider the adoption of any measures deemed appropriate to make it easier for the appropriate authorities to detect sums paid for acts of corruption in the event that they are being used as grounds for obtaining such treatment, such as the following:*

#### Measure (b)(i) suggested by the Committee:

*Manuals, guidelines or directives that will guide them in reviewing those applications, so that they are able to verify that the applications contain the established requirements, to confirm the truthfulness of the information provided, and to determine the origin of the expenditures or payment on which the claims are based.*

---

<sup>12</sup> *Ibid.* Section 162(c)(1) of the Internal Revenue Code provides: “No deduction shall be allowed ... for any payment made, directly or indirectly, to an official or employee of any government, or of any agency or instrumentality of any government, if the payment constitutes an illegal bribe or kickback or, if the payment is to an official or employee of a foreign government, the payment is unlawful under the Foreign Corrupt Practices Act of 1977.” Please see <https://www.law.cornell.edu/uscode/text/26/subtitle-A/chapter-1/subchapter-B/part-VI>

<sup>13</sup> Response to the Questionnaire, pgs. 7 – 8, *supra* note 10.

<sup>14</sup> Report of the Third Round, pgs. 8 – 9, *supra* note 3.

[24] With respect to the aforementioned measure, in its Response, the country under review presented information and new developments. In this regard, the Committee notes the following as steps that lead it to conclude said measure has been satisfactorily considered:<sup>15</sup>

[25] – The Internal Revenue Service (IRS), which is in charge of auditing tax returns of organizations and individuals to ensure information is reported correctly according to the tax laws and to verify the reported amount of tax, has prepared and published the Internal Revenue Manual (IRM). This Manual is the primary, official compilation of instructions to staff that relate to the administration and operation of the IRS. As noted by the country under review:<sup>16</sup>

[26] *“The IRM ensures employees have the approved policy and guidance they need to carry out their responsibilities in administering the tax laws or other agency obligations. In conducting a tax return assessment, in addition to deductions for operating expenses, examiners review areas susceptible to concealment, such as returns and allowances. Special attention would be given to the use of foreign bank accounts, other indicators of “slush funds” or the use of cash payments. Expense categories requiring careful scrutiny might include outside services (e.g. consulting) or items relating to foreign property of questionable use to the taxpayer or its affiliates. Additionally, examiners are encouraged to research sources such as other Federal agencies, as well as internal and external audit reports, for indications of illegal payment activity. Suspicions of illegal payments following the assessment of tax returns are flagged to the IRS compliance personnel, and further referred to the Criminal Investigation team of the IRS (IRS-CI).”*

[27] In this respect, the Committee notes that the IRM contains extensive sections on topics such as Submission Processing, Examining Processing and Collecting Processing, as well as including a Fraud Handbook, which is intended to provide a comprehensive guide for IRS employees in the recognition and development of potential fraud issues; referrals for criminal fraud; duties and responsibilities in joint investigations; civil fraud cases; and other related fraud issues.<sup>17</sup>

[28] In view of the above, the Committee takes note of the satisfactory consideration by the country under review of measure (b)(i).

#### Measure (b)

*Continue to use, and consider the adoption of any measures deemed appropriate to make it easier for the appropriate authorities to detect sums paid for acts of corruption in the event that they are being used as grounds for obtaining such treatment, such as the following:*

#### Measure b(ii) suggested by the Committee:

*The possibility of accessing the sources of information necessary to conduct those verifications and confirmations, including requests from financial institutions.*

[29] With respect to the aforementioned measure, in its Response, the country under review presented information and new developments. In this regard, the Committee notes the following as steps that lead it to conclude said measure has been satisfactorily considered:<sup>18</sup>

---

<sup>15</sup> Response to the Questionnaire, pgs. 9 – 11, *supra* note 10.

<sup>16</sup> *Ibid.*, pg. 10. The Internal Revenue Manual is available at: <https://www.irs.gov/irm>

<sup>17</sup> IRM, Part 25, Fraud Handbook, *ibid.*

<sup>18</sup> Response to the Questionnaire, pgs. 11 – 13, *supra* note 10.



[30] – The IRM, Part 9, Chapter 4, Section 4 establishes special procedures for special agents to follow in requesting information, which must be followed in administrative investigations, and should be followed whenever possible in grand jury investigations. In this respect, it provides the procedures for requesting information from government entities, foreign countries, as well as that from financial institutions.<sup>19</sup>

[31] The Committee also notes that Part 9, Chapter 4, Section 2, sets out the sources of information that are available regarding the gathering of information during the course of an investigation, which include i) governmental records; ii) business, financial, professional, and educational records; iii) investigative databases; and iv) informants.<sup>20</sup>

[32] The country under review also makes reference to the Joint Chiefs of Global Tax Enforcement (known as the J5), which was established to combat transnational tax crime through increased enforcement collaboration. Made up of the taxation agencies of Australia, Canada, the Netherlands, the United Kingdom; and the United States, the J5 works together to gather information, share intelligence, conduct operations and build the capacity of tax crime enforcement officials.<sup>21</sup>

[33] In view of the above, the Committee takes note of the satisfactory consideration by the country under review of measure (b)(ii).

#### Measure (b)

*Continue to use, and consider the adoption of any measures deemed appropriate to make it easier for the appropriate authorities to detect sums paid for acts of corruption in the event that they are being used as grounds for obtaining such treatment, such as the following:*

#### Measure b(iii) suggested by the Committee:

*Computer programs that facilitate data consultation and cross-checking of information whenever necessary for the purpose of fulfilling their functions.*

[34] With respect to the aforementioned measure, in its Response, the country under review presented information and new developments. In this regard, the Committee notes the following as steps that lead it to conclude said measure has been satisfactorily considered:<sup>22</sup>

[35] – The US government employs a purpose-built data collection and analysis platform that is used to examine information and patterns of suspicious activities that will determine if a case should be created for further follow up. Sensitive but Unclassified Information, as well as Personally Identifiable Information is used in an agent's analysis. In this respect, a taxpayer's Social Security Number and Contact Information (name, address, phone numbers, date of birth and IP addresses) are used to identify individuals directly and indirectly related to an investigation. Viewing Financial Account numbers, and Tax Account Information as well as retrieving Passport Numbers (to gather travel tendencies) also helps in identifying fraud, ID theft or tax evasion.

---

<sup>19</sup> IRM, Part 9, Chapter 4, Section 4, Obtaining Records from Financial Institutions, *supra* note 16.

<sup>20</sup> IRM, Part 9, Chapter 4, Section 2, *ibid.*

<sup>21</sup> See Joint Chiefs of Global Tax Enforcement, <https://www.irs.gov/compliance/joint-chiefs-of-global-tax-enforcement>

<sup>22</sup> Response to the Questionnaire, pgs. 11 – 13, *supra* note 10.

[36] The Committee further notes that the IRS has been modernizing its tax processing system. In this regard, it currently uses an Individual Master File system,<sup>23</sup> for individual taxpayers, which is being replaced by the Customer Account Data Engine 2 (CADE 2). CADE 2 is the IRS' modernized core tax processing system that provides daily processing of taxpayer accounts to enable faster processing of tax refunds and more efficient operations, and improved fraud detection, as well as leverages modern-day database technology, programming languages and principles to determine refunds, penalty and interest calculations, monitor compliance, and track historical data for individual taxpayer accounts.<sup>24</sup>

[37] In addition, the Committee observes that the country under review is utilizing data and analytics to address potential fraud and protect taxpayer data and IRS systems.<sup>25</sup> In this respect, the Return Review Program for Fraud Detection uses cutting-edge machine-learning technologies to detect, resolve, and prevent criminal and civil tax refund fraud and noncompliance. As a result, since the Return Review Program began in 2015, it has systemically detected almost \$13 billion dollars of pre-refund fraud.<sup>26</sup>

[38] The Committee further notes that Part 2 of the IRM specifically addresses the use of Information Technology.<sup>27</sup>

[39] In view of the above, the Committee takes note of the satisfactory consideration by the country under review of measure (b)(iii).

#### Measure (b)

*Continue to use, and consider the adoption of any measures deemed appropriate to make it easier for the appropriate authorities to detect sums paid for acts of corruption in the event that they are being used as grounds for obtaining such treatment, such as the following:*

#### Measure b(iv) suggested by the Committee:

*Institutional coordination mechanisms that will provide the timely collaboration needed from other authorities, on such aspects as certifying the authenticity of the documents in support of the application of favorable tax treatment.*

[40] With respect to the aforementioned measure, in its Response, the country under review presented information and new developments. In this regard, the Committee notes the following as steps that lead it to conclude said measure has been satisfactorily considered:<sup>28</sup>

[41] – The Criminal Investigation Division of the IRS (IRS–CI) investigates potential criminal violations of the Internal Revenue Code and related financial crimes, such as fraud and money laundering,

---

<sup>23</sup> The Individual Master File is a magnetic tape record of all individual income tax filers, in social security number sequence. All tax data and related information pertaining to individual income taxpayers are posted to the File so that it reflects a continuously updated and current record of each taxpayer's account. All settlements with taxpayers are affected through computer processing of the File account and the data therein is used for accounting records, for issuance of refund checks, bills or notices, answering inquiries, classifying returns for audit, preparing reports and other matters concerned with the processing and enforcement activities of the IRS. In addition, there is a Business Master File, which is maintained on magnetic tape and is a tax record of business taxpayers required by law and regulations to have employer identification numbers (EIN) as identifying account numbers, see IRM, Part 9, Chapter 4, Section 2, *supra* note 16.

<sup>24</sup> See 2021 IRS IT Annual Key Insights Report, pg. 12, <https://www.irs.gov/pub/irs-pdf/p5453.pdf>, and Modernizing Tax Processing Systems, <https://www.irs.gov/about-irs/modernizing-tax-processing-systems>

<sup>25</sup> 2021 IRS IT Report, *ibid.*, pg. 13.

<sup>26</sup> *Ibid.*, pg. 14.

<sup>27</sup> IRM, Part 9, Information Technology, *supra* note 16.

<sup>28</sup> Response to the Questionnaire, pgs. 15 – 16, *supra* note 10.

and it is the only federal agency that has statutory authority to investigate criminal violations of the Code, and to refer these cases for prosecution. IRS-CI receives suspicions of foreign bribery following tax audits, as well as detected suspicions of foreign bribery in the context of criminal investigations. The country under review further notes:<sup>29</sup>

[42] *“Once IRS-CI has opened an investigation, it is authorized to request permission to expand the investigation to other non-tax criminal violations arising out of the same facts and circumstances and request assistance from other law enforcement agencies that have jurisdiction to pursue those crimes. IRS-CI has a long history of cooperating with other U.S. law enforcement agencies on corruption-related matters. Between January 2013 and July 2019, the Department of Justice (DOJ) or the Securities and Exchange Commission (SEC) – which are responsible for enforcement of foreign bribery laws - have acknowledged assistance provided by the IRS-CI in at least 14 FCPA-related cases. The Internal Revenue Manual (IRM) also contains detailed guidance to IRS-CI investigators on how to request information from other sources, including other U.S. federal agencies. See IRM 9.4.4.”*

[43] The Committee further observes, as set out in the consideration of measure b(ii), Part 9, Chapter 4, Section 4 of the IRM provides for the procedures or mechanisms for requesting information from government entities, foreign countries, as well as that from financial institutions.<sup>30</sup> For example, it sets out the mechanisms for soliciting information from the Social Security Administration; the Department of Labor; the State Department; the Securities and Exchange Commission; the Department of Transportation; and the Financial Crimes Enforcement Network, among others.

[44] In view of the above, the Committee takes note of the satisfactory consideration by the country under review of measure (b)(iv).

#### Measure (b)

*Continue to use, and consider the adoption of any measures deemed appropriate to make it easier for the appropriate authorities to detect sums paid for acts of corruption in the event that they are being used as grounds for obtaining such treatment, such as the following:*

#### Measure b(v) suggested by the Committee:

*Training programs designed specifically to alert officials to the methods used to disguise payments for corruption and to instruct them in ways of detecting such payments in the applications.*

[45] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:<sup>31</sup>

[46] – The National Criminal Investigation Training Academy (NCITA) is responsible for conducting, developing, and staffing international, overseas, and/or foreign training. The country under review further notes:<sup>32</sup>

[47] *“The NCITA International Training Team is used for international teaching assignments. When this is not possible, certified instructors from the NCITA staff will be requested through management*

---

<sup>29</sup> *Ibid.*

<sup>30</sup> IRM, Part 9, Chapter 4, Section 4, *supra* note 16.

<sup>31</sup> Response to the Questionnaire, pgs. 16 – 17, *supra* note 10.

<sup>32</sup> *Ibid.*, pg. 17.

*channels for these international teaching assignments. If certified instructors from NCITA are not available, certified instructors from CI [Criminal Investigation] field offices will be requested through management channels for these international teaching assignments. The NCITA International Training Team maintains a list of certified instructors, pre-approved by CI field office management, for international teaching assignments. The selection of these certified instructors is at the discretion of the Director.”*

[48] The country under review also noted during the on-site visit that the training covers issues of public corruption, money laundering, as well as international tax law.

[49] The Committee further notes that the NCITA is also responsible for developing and monitoring formalized training programs and on-the-job training, and for scheduling and conducting training, for the preparation of IRS Criminal Investigation employees for their positions.<sup>33</sup>

[50] In this regard, the training addresses areas such as: Basic Training Program; Advanced and Specialized Training Program; International Training; Leadership Training Programs; Continuing Professional Education (CPE); Firearms Training and Qualification; Integrated Use of Force Training; Certified Public Accountant (CPA)/Attorney Professional Certifications; and Continuing Personal Development.<sup>34</sup>

[51] The Committee notes that as part of the Training Program, all new trainees are to take the course, Criminal Investigator Program, which educates them in various federal law enforcement skills, including the fundamentals of criminal law, constitutional law, the rules of evidence and criminal procedures, trial practices, investigative techniques, vehicle operation, non-lethal control techniques, and firearms. Upon satisfactory completion of this course, trainees will then receive training on Special Agent Investigative Techniques, which includes criminal violations of tax law, in order to develop the skills necessary to investigate potential criminal violations of Internal Revenue laws and related offenses. Trainees also work on tax training investigations, as well as on money laundering investigations, among other things.<sup>35</sup>

[52] In addition, the country under review, during the on-site visit, further noted that upon being hired, IRS Criminal Investigators receive Special Agent Basic Training at the Federal Law Enforcement Training Center (FLETC), which is approximately 6 months long. Candidates receive training on relevant statutes, money laundering, the bank secrecy act, as well as examine case studies, including anomalies of books and records. In addition, investigators are required to receive updated and ongoing training on these topics every 5 years at FLETC. The representative during the on-site visit also noted that speakers are also brought in to discuss new developments, and once a new program is put in place, investigators receive training that is a week or two weeks long.

[53] The country under review also noted that on the civil side of the IRS, which would include tax examiners, training is provided when starting a position within the IRS, and continuous learning are provided as well.

[54] The Committee observes that the country under review has continued to provide training programs to criminal investigators of the IRS. However, it is not apparent if training is provided to tax examiners that specifically alert them on methods used to disguise payments for corruption and to instruct them in ways of detecting such payments in the applications for tax benefits. In this regard, while the IRM has a Fraud Handbook that sets out the procedures for referring a case to the IRS-CI when there is a determination that

---

<sup>33</sup> IRM, Part 9, Chapter 4, Section 2, *supra* note 16.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

there is a firm indication of fraud, as well as indicators for identifying fraud, no further information is provided on training in this respect.<sup>36</sup>

[55] The Committee notes that the duties of a tax examiner include important functions that could be relevant for the detection of corruption when reviewing an application for a tax benefit. These functions include, among other things, reviewing information received from taxpayers and/or other sources to determine corrective action; and identifying questionable entries on tax returns for referral to appropriate area for review.<sup>37</sup>

[56] In this respect, the Committee notes that tax examiners play an important role in identifying irregularities that may be indicative of corruption for possible referral to appropriate authorities. Providing training could help facilitate, for example, the making of referrals by tax examiners to the IRS-CI, when a favorable tax treatment for expenditures made in violation of anticorruption laws is detected.

[57] To this end, the country under review during the on-site visit, and in a document submitted subsequent to the visit, noted that in the period covering January 1, 2013 – June 30, 2019, there were 4 fraud referrals received from IRS Civil functions, of which 3 were accepted and elevated to a criminal investigation.

[58] The Committee believes that the relatively low number of referrals made on the topic over a six-year period may indicate the need for training on the issue, which would facilitate further detections of fraud.

[59] Given the foregoing, the Committee believes the country under review should consider requiring tax examiners receive mandatory training that raises awareness regarding their role in combating corruption, such as bribery, in order to facilitate the possibility of referrals being made to IRS-CI on the matter. The Committee will formulate a recommendation in this regard. (See Recommendation 1.4.2 in section 1.4 of Chapter II of this Report)

[60] The Committee also believes the country under review should consider requiring tax examiners receive mandatory training on key indicators of bribery, when a tax benefit is claimed that is based on an act of corruption. This might also encourage further referrals for investigation or prosecution. The Committee will formulate a recommendation in this regard. (See Recommendation 1.4.3 in section 1.4 of Chapter II of this Report)

#### Measure (b)

*Continue to use, and consider the adoption of any measures deemed appropriate to make it easier for the appropriate authorities to detect sums paid for acts of corruption in the event that they are being used as grounds for obtaining such treatment, such as the following:*

#### Measure b(vi) suggested by the Committee:

*Channels of communication so that they may promptly report to tax authorities who decide on deductibility and warn them of the anomalies detected or of any irregularity that could affect the decision.*

---

<sup>36</sup> The Committee notes that in Part 25, Chapter 1, Section 2, subsection 2.3, Indicators of Fraud, the IRM sets out examples of what constitutes indicators of fraud on income; expenses or deductions; books and records; allocations of income; conduct of taxpayer; and methods of concealment, *ibid*.

<sup>37</sup> MESICIC US On-Site Visit, Denial of Tax Benefits Information, document submitted by the country under review subsequent to the on-site visit.

[61] With respect to the aforementioned measure, in its Response, the country under review presented information and new developments. In this regard, the Committee notes the following as steps that lead it to conclude said measure has been satisfactorily considered:<sup>38</sup>

[62] – The country under review notes that a whistleblower can submit a report through the IRS website, which can include, among the types of tax fraud listed on the IRS website are: false exemptions or deductions; kickbacks; a false or altered document; organized crime, and failure to follow the tax laws. Moreover, taxpayers can voluntarily disclose if they have committed tax or tax-related crimes and have criminal exposure due to willful violation of the law, which is carried out through the Voluntary Disclosure Practice. This is a longstanding practice of IRS-CI, which takes timely, accurate, and complete voluntary disclosures under consideration when determining whether to recommend criminal prosecution. Such a disclosure will not automatically guarantee immunity from prosecution; however, a voluntary disclosure may result in prosecution not being recommended.<sup>39</sup>

[63] The Committee also notes that in the IRM, procedures are set out for tax examiners or revenue agents to promptly report on the anomalies detected or of any irregularity that could affect the decision on a tax benefit. In this respect, when indicators of fraud are uncovered, the compliance employee must clearly document the potential fraud indicators and initiate a discussion with the compliance employee's group manager. If the compliance employee's group manager concurs there are indicators of fraud warranting fraud development, the compliance employee must contact the fraud enforcement advisor. The IRM then sets out further steps to take, before referring to IRS-CI.<sup>40</sup>

[64] In view of the above, the Committee takes note of the satisfactory consideration by the country under review of measure (b)(vi).

Measure c) suggested by the Committee:

*Select and develop, through the tax authorities responsible for processing applications for favorable tax treatment and the other authorities or organs with jurisdiction in that respect, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow up on the recommendations made in this report in relation thereto.*

[65] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure.<sup>41</sup>

[66] – The country under review notes that the IRS Criminal Investigation Division, in its Annual Report, compiles the Division's accomplishments and criminal enforcement actions taken in the past fiscal year. This Report summarizes a wide variety of the Division's activities and includes case examples from

---

<sup>38</sup> Response to the Questionnaire, pgs. 18 – 19, *supra* note 10.

<sup>39</sup> In this respect, the country under review further notes: "A voluntary disclosure occurs when a taxpayer provides a truthful, timely, and complete disclosure to CI through designated procedures. It also requires the individual to: Cooperate with the IRS in determining the taxpayer's correct tax liability and make good faith arrangements with the IRS to pay - in full - the tax, interest and any applicable penalties owed. A disclosure is timely if the IRS receives it before it has: commenced a civil examination or criminal investigation; received information from a third party (e.g., informant, other governmental agency, John Doe summons, etc.) alerting us to your noncompliance; acquired information directly related to your specific noncompliance from a criminal enforcement action (e.g., search warrant, grand jury subpoena, etc.)," *ibid*.

<sup>40</sup> See Part 25, Chapter 2, Section 1, Fraud Development Procedures, as well as Part 25, Chapter 2, Section 3, Criminal Referrals, *supra* note 16.

<sup>41</sup> Response to the Questionnaire, pgs. 19 – 20, *supra* note 10.

each field office on a wide range of financial crimes. The country under review also provided the following table from the 2022 Annual Report:<sup>42</sup>

<b>Public Corruption</b>	<b>2022</b>	<b>2021</b>	<b>2020</b>
Investigations Initiated	26	51	73
Prosecution Recommendations	24	38	63
Informations/ Indictments	27	52	51
Sentenced	38	27	40
Incarceration Rate	84%	78%	68%
Average Months to Serve	39	24	21

[67] The Committee notes that the Annual Report sets out that IRS-CI investigates elected and appointed individuals from all levels of government including local, county, state, and federal, as well as foreign officials, and include such criminal offenses as bribery, extortion, embezzlement, kickbacks, tax fraud, and money laundering.<sup>43</sup>

[68] The Committee observes that in the United States Report of the Third Round, this recommendation was formulated, although it also considered that the information provided on a number of criminal investigations, involving bribery or Foreign Corrupt Practices Act violations and their outcome, demonstrated that enforcement action has taken place with respect to the criminal offenses related to favorable tax treatment for payments made in violation of the anticorruption laws.<sup>44</sup>

[69] In view of the above, the Committee takes note of the satisfactory consideration by the country under review of measure (c).

## **1.2. New Developments with respect to the provision of the Convention on Denial or Prevention of Favorable Tax Treatment for Expenditures made in Violation of the Anticorruption Laws.**

### **1.2.1 New Developments with Respect to the Legal Framework.**

---

<sup>42</sup> 2022 Annual Report IRS-CI, <https://www.irs.gov/pub/irs-pdf/p3583.pdf>

<sup>43</sup> *Ibid*, pg. 6.

<sup>44</sup> Report of the Third Round, pg. 9, *supra* note 3.

[70] The country under review notes that it does not have anything to report regarding new developments with respect to the legal framework.<sup>45</sup>

### **1.2.2 New Developments with Respect to Technology**

[71] The country under review notes that it does not have anything to report regarding new developments with respect to technology.<sup>46</sup>

### **1.3. Results**

[72] The country under review did not present any results regarding the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, either in its Response to the Questionnaire or during the on-site visit.<sup>47</sup>

[73] Given that the issue of results was reviewed in the consideration of measure (c) in section 1.1 above, the Committee reiterates observations made therein.

### **1.4. Recommendations**

[74] In light of the observations formulated in section 1.1 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendations:

- 1.4.1 Consider continuing to make efforts to ensure that facilitation payments to foreign government officials do not receive favorable tax treatment, taking into consideration that these payments are not criminalized in the country under review. (See paragraph 23 in section 1.1 of Chapter II of this Report)
- 1.4.2 Require tax examiners to receive mandatory training that raises awareness regarding their role in combating corruption, such as bribery, in order to facilitate the possibility of referrals being made to IRS-CI on the matter. (See paragraph 59 in section 1.1 of Chapter II of this Report)
- 1.4.3 Require tax examiners to receive mandatory training regarding key indicators of bribery when a tax benefit is claimed that is based on an act of corruption and transnational bribery, as set out in the Interamerican Convention against Corruption. (See paragraph 60 in section 1.1 of Chapter II of this Report)

## **2. PREVENTION OF BRIBERY OF DOMESTIC AND FOREIGN PUBLIC OFFICIALS (ARTICLE III, PARAGRAPH 10 OF THE CONVENTION).**

### **2.1. Follow-Up to the Implementation of the Recommendations Formulated in the Third Round.**

Recommendation 2(a) suggested by the Committee:

*Consider adopting, through the means it deems appropriate, any additional measures that might be beneficial, to further promote that professional confidentiality is not an obstacle for auditors whose*

---

<sup>45</sup> Response to the Questionnaire, pg. 35, *supra* note 10.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*, pg. 64.



*activities are governed by the AICPA and its Code of Conduct to bring to the attention of the appropriate authorities any acts of corruption of which they become aware in the performance of their duties.*

[75] With respect to the aforementioned measure, in its Response, the country under review presented information that it considers pertinent.<sup>48</sup>

[76] In this respect, the country under review notes the provisions of section 10A of the Securities and Exchange Act, which requires a company's board of directors or its auditor to notify the Securities and Exchange Commission about possible illegal acts under certain conditions as well as the standards set out by the Public Company Accounting Oversight Board (PCAOB). The Committee observes that the provisions provided were already reviewed and considered by the Committee in the Report of the Third Round.<sup>49</sup>

[77] The Committee further observes that a Code of Conduct of the American Institute of Certified Public Accountants (AICPA) was updated in 2014, subsequent to the adoption of the Report of the Third Round. In this respect, the Committee notes, however, that the provisions on client confidentiality are identical to the one reviewed by the Committee in the Third Round in the previous version and it appears no further developments have been carried out to further promote that professional confidentiality is not an obstacle for private sector auditors whose activities are governed by the AICPA and its Code of Conduct to bring to the attention of the appropriate authorities any acts of corruption of which they become aware in the performance of their duties.<sup>50</sup>

[78] Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation of recommendation 2(a). (See Recommendation 2.4.1 in section 2.4 of Chapter II of this Report)

Recommendation 2(b) suggested by the Committee:

*Consider continuing its efforts regarding holding awareness campaigns that target the individuals responsible for the entry of accounting records and for accounting for their accuracy, on the importance of abiding by the standards in force to ensure the veracity of those records as well as on the consequences of their violation. The country under review could also consider continuing its efforts regarding the implementation of training programs specifically designed to instruct those who work in the area of internal control in publicly held companies and other types of associations required to keep accounting records, on how to detect acts of corruption in the course of their work.*

---

<sup>48</sup> *Ibid.*, pg. 22.

<sup>49</sup> See paragraphs 53 – 55, 65 and 74, Report of the Third Round, *supra* note 3. The country under review, in its observations to the draft preliminary report, noted that AS 2405, *Illegal Acts by Clients*, was amended in 2012, 2015, and 2017—after the Report of the Third Round. Such revisions noted explicitly that the auditor should make inquiries of the client's audit committee concerning the client's compliance with laws and regulations, and knowledge of violations or possible violations of laws or regulations. Additionally, the PCAOB is proposing amendments to its auditing standards related to an auditor's consideration of a company's noncompliance with laws and regulations in the performance of an audit. See PCAOB, Proposing Release: Amendments to PCAOB Auditing Standards related to a Company's Noncompliance with Laws and Regulations, Release No. 2023-003 (June 6, 2023), available at <https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/docket-051/pcaob-release-no.-2023-003---noclar.pdf>

<sup>50</sup> See Rule 1.700.001 Confidential Client Information Rule; 1.310.001 Compliance with Standards Rule, and Rule 1.320.001 Accounting Principles Rule, [AICPA Code of Professional Conduct](#), and paragraph 67 and footnote 22 of the Report of the Third Round, *ibid.*

[79] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure.<sup>51</sup>

[80] – The country under review notes that it has a number of useful materials for individuals wanting to learn more about US anticorruption policies and practices. In this respect, the country under review cites the Resource Guide to the US Foreign Corrupt Practices Act (FCPA), which is prepared by the US Department of Justice and the Securities and Exchange Commission. This Guide, originally released in 2012 and updated in July 2020, provides a detailed compilation of information and analysis regarding the Foreign Corrupt Practices Act and related enforcement. It endeavors to provide helpful information to the public, including practitioners and enterprises of all shapes and sizes; from small businesses transacting abroad for the first time to multinational corporations with subsidiaries around the world. The country under review further notes:<sup>52</sup>

[81] “[T]he Guide addresses a wide variety of topics, including who and what is covered by the FCPA’s anti-bribery and accounting provisions; the definition of a “foreign official”; the jurisdictional reach of the FCPA; types of proper and improper payments; application of successor liability in the mergers and acquisitions context; the hallmarks of an effective corporate compliance program; and the different types of civil and criminal resolutions available in the FCPA context. The Guide also sets out the factors considered by DOJ and SEC when deciding to open an investigation or bring charges, such as among others, voluntary self-disclosure, full cooperation, and timely and appropriate remediation, including implementation of an effective compliance and ethics program. On these and other topics, the Guide provides detailed information about the statutory requirements as well as insight into DOJ and SEC enforcement policies and practices through hypotheticals, examples of enforcement actions and declinations, and summaries of applicable case law. The Guide is also available in Spanish.”<sup>53</sup>

[82] The Committee notes that the Guide provides an overview of the accounting provisions applicable to public companies covered by the FCPA. These provisions are designed to strengthen the accuracy of the corporate books and records and the reliability of the audit process.<sup>54</sup> The Guide goes into greater detail on two primary components of the FCPA. The first is the books and records provisions, by which issuers, companies that are required to file reports with the Securities and Exchange Commission (SEC) or that have securities registered with the SEC, must make and keep books, records and accounts that, in reasonable detail, accurately and fairly reflect the issuer’s transactions and dispositions of an issuer’s assets. Secondly, regarding internal controls, issuers must devise and maintain a system of internal accounting controls sufficient to assure management’s control, authority and responsibility over its assets.<sup>55</sup> The Guide also notes:<sup>56</sup>

[83] “Although the accounting provisions were originally enacted as part of the FCPA, they do not apply only to bribery-related violations. Rather, the accounting provisions ensure that all public companies account for all of their assets and liabilities accurately and in reasonable detail, and they form the backbone for most accounting fraud and issuer disclosure cases brought by DOJ and SEC.”

[84] During the on-site visit, the representatives of US Department of Justice (USDOJ) also mentioned a memorandum on evaluating internal controls and corporate compliance that was issued in 2020 that sets

---

<sup>51</sup> Response to the Questionnaire, pg. 23, *supra* note 10.

<sup>52</sup> *Ibid.* The FCPA Resource Guide is available at: <https://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf>

<sup>53</sup> The Spanish version of the Guide is available at: <https://www.justice.gov/media/1283651/dl?inline>

<sup>54</sup> FCPA Resource Guide, pg. 38, *supra* note 52.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

out the expectations and practical questions for effective corporate compliance programs. In this regard, the Committee notes that the objective of this document, the Evaluation of Corporate Compliance Programs, which was updated in March 2023, assists prosecutors in making informed decisions as to whether, and to what extent, the corporation's compliance program are effective at the time of an offense, and is effective at the time of a charging decision or resolution, for purposes of determining the appropriate form of any resolution or prosecution; monetary penalty, if any; and compliance obligations contained in any corporate criminal resolution (e.g., monitorship or reporting obligations).<sup>57</sup>

[85] In addition, during the on-site visit, the representatives of the USDOJ and the SEC noted that outreach is carried out to the private sector and civil society, such as accounting firms, in forums, conferences and meetings, as well as through press releases. In this respect, the Committee notes the participation by the USDOJ and the SEC in an annual international conference on the FCPA with the private sector, where they discuss key developments and other issues, and receive questions from participants. In addition, the Committee notes the participation by SEC Commissioners or staff in an annual conference hosted by the AICPA on SEC developments, which, among other things, often includes discussions of cases brought by the SEC in the areas of accounting, auditing, financial reporting, and issuer disclosure. The Committee also notes that both the USDOJ and the SEC Enforcement Division have created a specialized FCPA units, to focus on FCPA enforcement. In addition to investigating potential FCPA violations, such as the books and records provisions in the Act, these units conduct public outreach to raise awareness of anticorruption efforts and good corporate governance programs.<sup>58</sup>

[86] The country under review, during the on-site visit, also noted that with respect to training, the State Department provides training on the provisions of the FCPA, including those on books and records, to members of the foreign service, so that they may also provide direction to US companies overseas.

[87] The country under review further noted, during the on-site visit, that training targeting individuals responsible for the entry of accounting records and for accounting for their accuracy is carried out by accounting firms, as well as by professional associations. In this respect, the AICPA provides training on Forensic Services, the objective of which is to deepen the skills on forensic accounting and litigation support, as well as fraud detection and prevention.<sup>59</sup> As an example, the course, Financial Statement Fraud, Corruption and Asset Misappropriation, identifies steps of a financial statement fraud investigation and the internal controls needed in place to deter and prevent fraud; and the course, Financial Statement Fraud and Asset Misappropriation, describes some of the issues that allow financial statement fraud to occur, including a lack of adequate internal controls over the accounting processes.<sup>60</sup>

[88] The Committee notes the efforts by the country under review to continue its efforts regarding holding awareness campaigns as well as training that target the individuals responsible for the entry of accounting records and for accounting for their accuracy, on the importance of abiding by the standards in force to ensure the veracity of those records as well as on the consequences of their violation.

[89] In view of the above, the Committee takes note of the satisfactory consideration by the country under review of recommendation 2(b).

Recommendation 2(c) suggested by the Committee:

---

<sup>57</sup> Evaluation of Corporate Compliance Programs, <https://www.justice.gov/media/1160391/dl?inline>

<sup>58</sup> FCPA Resource Guide, pg. 4, *supra* note 52.

<sup>59</sup> See Forensic Services, <https://www.aicpa-cima.com/cpe-learning/forensic-services>

<sup>60</sup> See Financial Statement Fraud, Corruption and Asset Misappropriation, <https://www.aicpa-cima.com/cpe-learning/course/financial-statement-fraud-corruption-and-asset-misappropriation-part-1-and-part-2>, and Financial Statement Fraud, and Asset Misappropriation, <https://www.aicpa-cima.com/cpe-learning/course/financial-statement-fraud-and-asset-misappropriation>.

*Consider continuing its efforts regarding holding awareness and integrity promotion campaigns that target the private sector. In this regard, the country under review could consider continuing to adopt measures such as the production of manuals and guidelines for companies on best practices that should be implemented to prevent corruption.*

[90] With respect to the aforementioned measure, in its Response, the country under review presented information and new developments. In this regard, the Committee notes the following as steps that lead it to conclude said measure has been satisfactorily considered:<sup>61</sup>

[91] The country under review notes that US authorities have taken steps to raise awareness and promote integrity within the private sector. In this regard, it cites the resources related to foreign bribery on the Department of Justice website, which includes charging documents, plea agreements, deferred prosecution agreements, non-prosecution agreements, press releases, and other relevant pleadings and court decisions. The country under review also notes that the website provides copies of opinions issued in response to requests by companies and individuals under USDOJ's FCPA opinion procedure.<sup>62</sup>

[92] Moreover, the country under review reports that the website of the Securities and Exchange Commission's also provides a number of useful resources for the public. In this regard, the SEC's FCPA Unit maintains a "Spotlight on FCPA" section on SEC's website, which is updated regularly, provides general information about the Act and links to all SEC enforcement actions involving the FCPA, including both federal court actions and administrative proceedings, and contains other useful information.<sup>63</sup>

[93] The Committee also observes the information provided in the review of recommendation 2(b), with respect to the guidance provided in the FCPA Resource Guide, with respect to the books and records provisions of that Act. As noted in that section, the Guide goes into greater detail on the books and records provisions, which assists in ensuring that all public companies account for all of their assets and liabilities accurately and in reasonable detail, and they form the backbone for most accounting fraud and issuer disclosure cases brought by USDOJ and SEC.

[94] The Committee also notes the outreach undertaken by the USDOJ and the SEC, as set out in the review of recommendation 2(b) above.

[95] In view of the above, the Committee takes note of the satisfactory consideration by the country under review of recommendation 2(c).

Recommendation 2(d):

*Consider continuing the application of and the adoption of the instruments necessary to facilitate the detection, by the organs and entities responsible for preventing and/or investigating violations of measures designed to ensure the accuracy of accounting records, of sums paid for acts of corruption that are concealed in those records, such as the following:*

Measure i) suggested by the Committee:

*Review methods, including account inspections and analysis of periodically requested information, by which to detect anomalies in accounting records that could indicate the payment of sums for corruption.*

---

<sup>61</sup> Response to the Questionnaire, pgs. 25 – 26, *supra* note 10.

<sup>62</sup> See FCPA Opinions, <https://www.justice.gov/criminal/criminal-fraud/fcpa-opinions>

<sup>63</sup> Website available at: <https://www.sec.gov/enforcement/foreign-corrupt-practices-act>

[96] With respect to the aforementioned measure, in its Response, the country under review presented information that it considers pertinent:<sup>64</sup>

[97] In this respect, the country under review notes section 404 of the Sarbanes-Oxley Act, by which issuers are required to present in their annual reports management’s conclusion regarding the effectiveness of the company’s internal controls over financial reporting. In this regard, the country under review observes:<sup>65</sup>

[98] *“This statement must also assess the effectiveness of such internal controls and procedures. In addition, the company’s independent auditor must attest to and report on its assessment of the effectiveness of the company’s internal controls over financial reporting. As directed by Section 404, SEC has adopted rules requiring issuers and their independent auditors to report to the public on the effectiveness of the company’s internal control over financial reporting. These internal controls include those related to illegal acts and fraud—including acts of bribery—that could result in a material misstatement of the company’s financial statements.”*

[99] The country under review also makes reference to section 10A(a)(1) of the Securities and Exchange Act which provides that private sector auditors have an obligation to design procedures to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts.

[100] In addition, the country under review notes that the PCAOB inspects registered public accounting firms to assess compliance with the Sarbanes-Oxley Act, the rules of the PCAOB, the rules of the SEC, and professional standards, in connection with the firms’ performance of audits, issuance of audit reports, and related matters involving U.S. public companies and broker-dealers. In general, the PCAOB inspects accounting firms at least triennially, and if a firm provides audit opinions for more than 100 issuers, on an annual basis. In 2023, PCAOB inspectors outlined their priorities, which included increased focus on fraud-related audit procedures, among other things.<sup>66</sup> In addition, other public accounting firms are enrolled in the AICPA’s Peer Review Program, in which peer reviewers are directed to focus on higher risk audit engagements and on significant risk areas.<sup>67</sup>

[101] The Committee observes that much of the information provided was already reviewed and considered by the Committee in the Report of the Third Round.<sup>68</sup>

[102] Given the foregoing, the Committee takes note of the need for the country under review to give attention to implementation of measure i), given that no further developments have been reported, and will be reformulated in order to better capture its scope and content. (See Recommendation 2.4.2 in section 2.4 of Chapter II of this Report)

Recommendation 2(d):

*Consider continuing the application of and the adoption of the instruments necessary to facilitate the detection, by the organs and entities responsible for preventing and/or investigating violations of measures*

---

<sup>64</sup> Response to the Questionnaire, pg. 27, *supra* note 10.

<sup>65</sup> *Ibid.*

<sup>66</sup> See, e.g., PCAOB, 2023 Inspections to Prioritize Audit Risks Related to Fraud, the Financial Services Sector, Crypto (Apr. 17, 2023), available at <https://pcaobus.org/news-events/news-releases/news-release-detail/2023-inspections-to-prioritize-audit-risks-related-to-fraud-the-financial-services-sector-crypto>.

<sup>67</sup> See, e.g., AICPA, Peer Review Summary, available at <https://us.aicpa.org/research/standards/peerreview/peer-review-summary>

<sup>68</sup> See Report of the Third Round, paragraphs 53 – 55, 59, 64 – 67, and endnote iv, *supra* note 3.

*designed to ensure the accuracy of accounting records, of sums paid for acts of corruption that are concealed in those records, such as the following:*

Measure ii) suggested by the Committee:

*Investigation tactics, such as follow-up on expenditures, crosschecking of information and accounts, and requests for information from financial entities in order to determine if such payments occurred, by which to detect anomalies in accounting records that could indicate the payment of sums for corruption.*

[103] With respect to the aforementioned measure, in its Response, the country under review presented information that it considers pertinent:<sup>69</sup>

[104] In this respect, the country under review refers to the information provided with respect to measure i).

[105] The Committee observes that the information provided was already reviewed and considered by the Committee in the Report of the Third Round.<sup>70</sup>

[106] Given the foregoing, the Committee takes note of the need for the country under review to give attention to implementation of measure ii), as it pertains to private sector auditors, given that no further developments have been reported, and will be reformulated in order to better capture its scope and content. (See Recommendation 2.4.3 in section 2.4 of Chapter II of this Report)

Recommendation 2(d):

*Consider continuing the application of and the adoption of the instruments necessary to facilitate the detection, by the organs and entities responsible for preventing and/or investigating violations of measures designed to ensure the accuracy of accounting records, of sums paid for acts of corruption that are concealed in those records, such as the following:*

Measure iii) suggested by the Committee:

*Manuals, guidelines or directives for those organs and agencies that do not yet have them, on how to review accounting records in order to detect sums paid for corruption.*

[107] With respect to the aforementioned measure, in its Response, the country under review presented information that it considers pertinent:<sup>71</sup>

[108] – The country notes that all public companies in the United States must file financial statements that have been prepared in conformity with US Generally Accepted Accounting Principles (US GAAP). The country under review observes that these principles are among the most comprehensive in the world, and they require an accounting of all assets, liabilities, revenue, and expenses as well as extensive disclosures concerning the company's operations and financial condition. As these financial statements should be complete and fairly represent the company's financial condition, under US GAAP, any payments to foreign government officials must be properly accounted for in a company's books, records, and financial statements.

---

<sup>69</sup> Response to the Questionnaire, pg. 28, *supra* note 10.

<sup>70</sup> See Report of the Third Round, paragraphs 53 – 55, 59, endnote iv, *supra* note 3.

<sup>71</sup> Response to the Questionnaire, pg. 28, *supra* note 10.

[109] The country under review also refers to the SEC Rules that requires issuers to undergo an annual external audit of their financial statements and to make those audited financial statements available to the public by filing them with the SEC.<sup>72</sup> In this regard, the SEC Rules and the rules and standards issued by the PCAOB under SEC oversight, require external auditors to be independent of the companies that they audit, and they must comply with the rules and standards set forth by the PCAOB when they perform an audit of a public company. The country under review further notes:<sup>73</sup>

[110] *“The audit standards govern, for example, the auditor’s responsibility concerning material errors, irregularities, or illegal acts by a client and its officers, directors, and employees. Additionally, the auditor has a responsibility to obtain an understanding of an entity’s internal control over financial reporting as part of its audit and must communicate all significant deficiencies and material weaknesses identified during the audit to management and the audit committee.”*

[111] The country under review further notes that under Section 10A of the Exchange Act, independent auditors who discover an illegal act, such as the payment of bribes to domestic or foreign government officials, have certain obligations in connection with their audits of public companies, requiring auditors who become aware of illegal acts to report such acts to appropriate levels within the company and, if the company fails to take appropriate action, to notify SEC.

[112] The Committee observes that the provisions provided were already reviewed and considered by the Committee in the Report of the Third Round.<sup>74</sup>

[113] Given the foregoing, the Committee takes note of the need for the country under review to give attention to implementation of measure iii), given that no further developments have been reported, and will be reformulated in order to better capture its scope and content. (See Recommendation 2.4.4 in section 2.4 of Chapter II of this Report)

Recommendation 2(d):

*Consider continuing the application of and the adoption of the instruments necessary to facilitate the detection, by the organs and entities responsible for preventing and/or investigating violations of measures designed to ensure the accuracy of accounting records, of sums paid for acts of corruption that are concealed in those records, such as the following:*

Measure iv) suggested by the Committee:

*Computer programs that provide easy access to the necessary information to verify the veracity of accounting records and of the supporting documents on which they are based.*

[114] With respect to the aforementioned measure, in its Response, the country under review noted that it did not have anything to report.<sup>75</sup>

---

<sup>72</sup> These financial statements are available in the SEC EDGAR platform at <https://www.sec.gov/edgar>

<sup>73</sup> *Ibid.*, pg. 29.

<sup>74</sup> See Report of the Third Round, paragraphs 53 – 55 and 65, *supra* note 3. The Committee does note that one of the auditing standards issued by the PCAOB, AS2405: Illegal Acts by Clients, which was reviewed by the Committee in the Third Round, is currently being considered for revision, to take into consideration new developments, seeing it has remained largely unchanged since its issuance in 1988, see Noncompliance with Laws and Regulations, <https://pcaobus.org/oversight/standards/standard-setting-research-projects/noncompliance-with-laws-regulations>

<sup>75</sup> Response to the Questionnaire, pg. 30, *supra* note 10.

[115] The Committee notes, however, that subsequent to the on-site visit, the country under review provided information on the issue. In this respect, the country under review noted the following:<sup>76</sup>

[116] *“This is a developing area in light of continued advancements in data analytics, but there are a number of tools available to auditors, some of which may be developed in-house, particularly at larger accounting firms. Obtaining data requires the auditor to become sufficiently familiar with the audit client’s systems and is often an iterative process. Once obtained, some of the generalized audit software used for data analysis includes IDEA, ACL, and TeamMate, among others.”*

[117] In this regard, the Committee notes that the AICPA has a Technology hub page which provides the latest technology information, tools and resources to assist its members, on issues such as digital assets, artificial intelligence, and data analytics.<sup>77</sup> The Committee also notes that the AICPA has issued a Guide to Audit Data Analytics, which sets out how audit data analytics can be applied to the current financial statement audit to gather audit evidence.<sup>78</sup> It notes that, among other things, audit data analytics can improve an understanding of an entity’s operations and associated risks, including the risk of fraud; increased potential for detecting material misstatements; and improved communications with those charged with governance of audited entities.

[118] In view of the above, the Committee takes note of the satisfactory consideration by the country under review of measure (d)(iv).

Recommendation 2(d):

*Consider continuing the application of and the adoption of the instruments necessary to facilitate the detection, by the organs and entities responsible for preventing and/or investigating violations of measures designed to ensure the accuracy of accounting records, of sums paid for acts of corruption that are concealed in those records, such as the following:*

Measure v) suggested by the Committee:

*Institutional coordination mechanisms that enable these organs or entities to easily obtain the timely necessary collaboration from other institutions to verify the veracity of accounting records and of the supporting documents on which they are based or to establish their authenticity.*

[119] With respect to the aforementioned measure, in its Response, the country under review noted that it did not have anything to report.<sup>79</sup>

[120] The Committee notes, however, that subsequent to the on-site visit, the country under review provided information on the issue. In this respect, the country under review noted the following:<sup>80</sup>

---

<sup>76</sup> Additional Information on Topics Reviewed, pg. 1, <http://www.oas.org/en/sla/dlc/mesicic/paises-rondas.html?c=United%20States&r=6>

<sup>77</sup> See Technology, <https://www.aicpa-cima.com/topic/technology>

<sup>78</sup> Guide to Audit Data Analytics an Overview, <https://www.aicpa-cima.com/resources/article/guide-to-audit-data-analytics-an-overview>

<sup>79</sup> Response to the Questionnaire, pg. 31, *supra* note 10. The country under review, in its observations to the draft preliminary report, that in the case of PCAOB audits, AS 2310 is the relevant auditing standard, which the PCAOB updated last year. In addition, the confirmation process implicates, and expressly references, a number of other auditing standards as well as the inspections process, see AS 2310 (<https://pcaobus.org/oversight/standards/auditing-standards/details/AS2310>) and the updated standard that will be effective for audits for fiscal years ending on or after June 15, 2025 ([https://pcaobus.org/oversight/standards/auditing-standards/details/as-2310-the-auditor-s-use-of-confirmation-\(effective-for-fye-on-or-after-6-15-2025\)](https://pcaobus.org/oversight/standards/auditing-standards/details/as-2310-the-auditor-s-use-of-confirmation-(effective-for-fye-on-or-after-6-15-2025))).

<sup>80</sup> Additional Information on Topics Reviewed, *supra* note 76, pg. 2.



[121] “Information obtained directly from third parties can be valuable to auditors in providing independent corroboration of the company’s own records and ultimately in obtaining sufficient appropriate audit evidence. Such confirmation requests can relate to a debtor’s confirmation of receivables, a bank’s confirmation of account balances, or a counterparty’s confirmation of the terms of a contract, for instance. AICPA standards addressing this confirmation process include AU-C Section 330, *Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence Obtained*.<sup>81</sup> Additionally, the PCAOB has recently filed with the Commission certain proposed rules for approval, including AS 2310, *The Auditor’s Use of Confirmation*, which would replace current standard AS 2310, *The Confirmation Process*.<sup>82</sup>”

[122] In this respect, the Committee notes that AU-C Section 330, *Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence Obtained*, sets out, among other things, that importance of obtaining audit evidence in the form of external confirmations received directly by the auditor from appropriate confirming parties, which may assist the auditor in obtaining audit evidence to respond to significant risks of material misstatement, whether due to fraud or error.<sup>83</sup> The Committee observes, however, that it has not received additional information, to determine how auditors receive from other institutions, information to verify the veracity of accounting records and the supporting documents on which they are based or to establish their authenticity.

[123] In addition, the PCAOB filed a proposal to update the rules on auditor’s use of confirmation, relating to AS2310, which was approved by the SEC on December 1, 2023, and which will be effective for all financial statements for fiscal years ending on or after June 15, 2025.<sup>84</sup>

[124] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (b)(v) and reiterates the need for the country under review to continue to give additional attention thereto given that the Committee has not received additional information, to determine how private sector auditors receive from other institutions, information to verify the veracity of accounting records and of the supporting documents on which they are based or to establish their authenticity. In this regard, the Committee considers it advisable to reformulate the recommendation so as to clarify its scope and content. (See Recommendation 2.4.5 in section 2.4 of Chapter II of this Report)

Recommendation 2(d):

*Consider continuing the application of and the adoption of the instruments necessary to facilitate the detection, by the organs and entities responsible for preventing and/or investigating violations of measures designed to ensure the accuracy of accounting records, of sums paid for acts of corruption that are concealed in those records, such as the following:*

Measure vi) suggested by the Committee:

---

<sup>81</sup> Available at: <https://us.aicpa.org/content/dam/aicpa/research/standards/auditattest/downloadabledocuments/au-c-00330.pdf>

<sup>82</sup> Available at: <https://www.federalregister.gov/documents/2023/10/17/2023-22491/public-company-accounting-oversight-board-notice-of-filing-of-proposed-rules-on-the-auditors-use-of>

<sup>83</sup> AU-C Section 330, *Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence Obtained*, paragraph A59, *supra* note 81.

<sup>84</sup> As noted in the Summary to the proposal: “As described in the new standard, the confirmation process involves selecting one or more items to be confirmed, sending a confirmation request directly to a confirming party ( e.g., a financial institution), evaluating the information received, and addressing nonresponses and incomplete responses to obtain audit evidence about one or more financial statement assertions. If properly designed and executed by an auditor, the confirmation process may provide important evidence that the auditor obtains as part of an audit of a company’s financial statements,” *supra* note 81. See also [https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/docket\\_028/34-99060.pdf](https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/docket_028/34-99060.pdf).

*Training programs for the officials of these organs and entities, specifically designed to alert them to the methods used to disguise payments for corruption in those records and to instruct them on how to detect them.*

[125] With respect to the aforementioned measure, in its Response, the country under review noted that it did not have anything to report.<sup>85</sup>

[126] The Committee notes, however, that subsequent to the on-site visit, the country under review provided information on the issue. In this respect, the country under review noted the following:<sup>86</sup>

[127] *“Some accounting firms have created in-house training programs addressing fraud and corruption. Additionally, various continuing professional education programs, approved by state boards of accountancy, have addressed fraud and corruption.”*

[128] The Committee also notes, as set out in the consideration of Recommendation 2(b), that the AICPA provides training on Forensic Services, the objective of which is to deepen the skills on forensic accounting and litigation support, as well as fraud detection and prevention.<sup>87</sup> Courses such as Financial Statement Fraud, Corruption and Asset Misappropriation, provides auditors with steps in carrying out a financial statement fraud investigation and the internal controls needed in place to deter and prevent fraud. The course helps participants in identifying the different types of financial statement fraud; the concepts related to and instances of asset misappropriation; to identify the common characteristics of fraudsters; and the examples and key characteristics of certain types of financial statement fraud.<sup>88</sup>

[129] In addition, the Committee notes the course, Financial Statement Fraud and Asset Misappropriation, which describes some of the issues that allow financial statement fraud to occur, including a lack of adequate internal controls over the accounting processes.<sup>89</sup>

[130] In view of the above, the Committee takes note of the satisfactory consideration by the country under review of measure (d)(vi).

## **2.2. New Developments with respect to the Provisions of the Convention on the Prevention of Bribery of Domestic and Foreign Government Officials.**

### **2.2.1 New Developments with Respect to the Legal Framework.**

[131] The country under review notes that it does not have anything to report regarding new developments with respect to the legal framework.<sup>90</sup>

### **2.2.2 New Developments with Respect to Technology**

[132] The country under review notes that it does not have anything to report regarding new developments with respect to technology.<sup>91</sup>

## **2.3. Results**

---

<sup>85</sup> Response to the Questionnaire, pg. 32, *supra* note 10.

<sup>86</sup> Additional Information on Topics Reviewed, *supra* note 76, pg. 2.

<sup>87</sup> See Forensic Services, *supra* note 59.

<sup>88</sup> See Financial Statement Fraud, Corruption and Asset Misappropriation, *supra* note 60.

<sup>89</sup> See Financial Statement Fraud, and Asset Misappropriation, *supra* note 60.

<sup>90</sup> Response to the Questionnaire, pg. 35, *supra* note 10.

<sup>91</sup> *Ibid.*, pg. 36.

[133] The country under review, in its Response to the Questionnaire, did not present any results regarding the prevention of bribery of domestic and foreign government officials.<sup>92</sup>

[134] During the on-site visit, however, the representatives of the SEC noted that there are results available regarding the enforcement of the books and records provision set out in the FCPA, and which are available online. In this respect, the SEC maintains a publicly available list of the SEC's FCPA enforcement actions listed by calendar year, which identifies the companies receiving the fine, a short description of the case, as well as setting out the fine imposed.<sup>93</sup> In this respect, the list of enforcement actions extend from the 1978 to the present. For the last five years, the Committee compiled the following information, taken from the SEC website:

#### SEC FCPA Enforcement Actions

Year	2019	2020	2021	2022	2023
Enforcement Actions	17	8	5	7	9
Penalties Imposed <sup>94</sup>	\$2,515,975,000	\$1,508,050,000	\$185,029,0000	\$523,300,000	\$267,650,000

[135] The Committee also observes that the SEC releases press or litigation releases on its website, on the enforcement actions undertaken by the SEC, including for FCPA violations, of which a list of relevant cases were provided as part of the Response to the Questionnaire.<sup>95</sup>

[136] In this respect, the Committee acknowledges that the country under review maintains results on the enforcement for violation of the books and records offense, as it relates to foreign bribery. The Committee observes, however, that the provision on books and records introduced by the FCPA, has not solely been used in instances of foreign bribery, but also for cases that did not involve bribery, and were related to domestic transactions, as noted in the examples set out in litigation releases by the SEC available online.

[137] In this respect, the Committee observes the relevant provisions are found in section 13(b)(2)(A) of the Securities and Exchange Act of 1934, which provides that issuers, companies that are required to file reports with the SEC or that have securities registered with the SEC, are to “*make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.*” Moreover, section 13(b)(2)(B) provides that issuers are to also devise and maintain a system of internal accounting controls to provide sufficient reasonable assurances that:<sup>96</sup>

- (i) transactions are executed in accordance with management's general or specific authorization;
- (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;

---

<sup>92</sup> *Ibid.*

<sup>93</sup> SEC Enforcement Actions: FCPA Cases, <https://www.sec.gov/enforce/sec-enforcement-actions-fcpa-cases>. The country under review, in its observations to the draft preliminary report, noted that, in accordance with domestic securities legislation, the SEC does not carry out enforcement actions for violations of the books and records provision involving domestic acts of corruption.

<sup>94</sup> For example, for disgorgement and prejudgment interest, or fines, for violating the antibribery, bookkeeping and internal accounting controls provisions of the FCPA. All numbers in US dollars.

<sup>95</sup> See, Litigation Releases, <https://www.sec.gov/litigation/litreleases>. See also, Documents requested by the Secretariat, which provides information in this respect, <http://www.oas.org/en/sla/dlc/mesicic/paises-rondas.html?c=United%20States&r=6>

<sup>96</sup> Record Keeping and Internal Controls Provisions, <https://www.sec.gov/spotlight/fcpa/fcpa-recordkeeping.pdf>

- (iii) access to assets is permitted only in accordance with management's general or specific authorization; and
- (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

[138] The Committee also notes there are relevant provisions in the Sarbanes Oxley Act, notably, section 802(a), which provides for criminal penalties, including fines and/or imprisonment, for anyone who, “*knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States...*”<sup>97</sup>

[139] During the on-site visit, the representatives by the USDOJ noted the difficulties in maintaining results on domestic violations of the books and records offense. It was also noted that violations of the books and records offense involving domestic bribery may not be classified as such, but rather as fraud. With respect to the USDOJ, while all investigations of FCPA offenses go through the Fraud Section in Washington DC, domestic bribery offenses involving books and records are not centralized, and cases can occur in any of the 93 US Attorney Offices located in the United States, and statistics would be found locally in those Offices.

[140] The Committee believes, however, that the country under review should consider publishing information on cases involving violations of books and records offenses that involve acts of corruption carried out domestically, such as bribery, in order to identify challenges and recommend corrective measures where appropriate. The Committee will formulate recommendations. (See Recommendations 2.4.6, 2.4.7 and 2.4.8 in section 2.4 of Chapter II of this Report)

## **2.4. Recommendations**

[141] In light of the observations formulated in sections 2.1 and 2.3 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendations:

- 2.4.1 Consider adopting, through the means it deems appropriate, any additional measures that might be beneficial, to further promote that professional confidentiality is not an obstacle for private sector auditors whose activities are governed by the AICPA and its Code of Conduct to bring to the attention of the appropriate authorities any acts of corruption of which they become aware in the performance of their duties. (See paragraph 78 in section 2.1 of Chapter II of this Report)
- 2.4.2 Encourage the adoption of review methods, including account inspections and analysis of periodically requested information to help facilitate the detection by private sector auditors of anomalies in accounting records that could indicate the payment of sums for corruption. (See paragraph 102 in section 2.1 of Chapter II of this Report)
- 2.4.3 Encourage the adoption of investigation tactics, such as follow-up on expenditures, crosschecking of information and accounts, and requests for information from financial entities in order to help private sector auditors detect anomalies in accounting records that could indicate the payment of sums for corruption. (See paragraph 106 in section 2.1 of Chapter II of this Report)
- 2.4.4 Adopt manuals, guidelines or directives for those organs and agencies that do not yet have them, on how to review accounting records in order to detect sums paid for corruption. (See paragraph 113 in section 2.1 of Chapter II of this Report)

---

<sup>97</sup> Sarbanes Oxley Act, <https://www.govinfo.gov/content/pkg/PLAW-107publ204/html/PLAW-107publ204.htm>

- 2.4.5 Encourage, as necessary, institutional coordination mechanisms that enable private sector auditors to easily obtain the timely necessary collaboration from other institutions to verify the veracity of accounting records and of the supporting documents on which they are based or to establish their authenticity. (See paragraph 124 in section 2.1 of Chapter II of this Report)
- 2.4.6 Publish information on cases involving violations of section 13(b)(2)(A) of the Securities and Exchange Act of 1934, which provides that issuers are to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer, as it relates to criminal domestic acts of corruption, such as bribery, in order to identify challenges and recommend corrective measures where appropriate. (See paragraph 140 in section 2.3 of Chapter II of this Report)
- 2.4.7 Publish information on cases involving violations of section 13(b)(2)(B) of the Securities and Exchange Act of 1934, which provides that issuers are to devise and maintain a system of internal accounting controls, as it relates to criminal domestic acts of corruption, such as bribery, in order to identify challenges and recommend corrective measures where appropriate. (See paragraph 140 in section 2.3 of Chapter II of this Report)
- 2.4.8 Publish information on cases involving violations of section 802(a) of the Sarbanes Oxley Act, which provides for criminal penalties, including fines and/or imprisonment, for anyone who, knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States, as it relates to a domestic act of corruption, such as bribery, in order to identify challenges and recommend corrective measures where appropriate. (See paragraph 140 in section 2.3 of Chapter II of this Report)

### **3. TRANSNATIONAL BRIBERY (ARTICLE VIII OF THE CONVENTION).**

#### **3.1 Follow-up to the Implementation of the Recommendations Formulated in the Third Round.**

##### Recommendation suggested by the Committee:

*Consider undertaking to periodically review its policies and approach on facilitation payments in order to effectively combat the phenomenon and continue to encourage companies to prohibit or discourage the use of facilitation payments in internal company controls, ethics and compliance programs or measures.*

[142] With respect to the aforementioned measure, in its Response, the country under review presented information and new developments. In this regard, the Committee notes the following as steps that lead it to conclude said measure has been satisfactorily considered:<sup>98</sup>

[143] – The United States-Mexico-Canada Trade Agreement, which was signed on November 30, 2018, has a chapter dedicated to anticorruption including language that states that “the Parties recognize the harmful effects of facilitation payments”. The agreement commits each party to, “in accordance with its laws and regulations: (a) encourage enterprises to prohibit or discourage the use of facilitation payments;

---

<sup>98</sup> Response to the Questionnaire, pgs. 25 – 26, *supra* note 10.

and (b) take steps to raise awareness among its public officials of its bribery laws, with a view to stopping the solicitation and the acceptance of facilitation payments.”<sup>99</sup>

[144] – USDOJ personnel have spoken at public conferences at which they consistently emphasize that, although facilitation payments are excepted under the FCPA anti-bribery provisions, such payments may form the basis for another violation of law, including wire fraud or, if they are not properly recorded, the books and records provisions of the FCPA. The Department of Commerce conveys the same message to companies during FCPA trainings.

[145] - Discussion of facilitation payments come up in the normal course of panel discussions or presentations delivered by government personnel at FCPA conferences. For example, the USDOJ and SEC typically participate in the annual American Conference Institute’s FCPA Conference in National Harbor, Maryland, which is attended by approximately 800 people, including white-collar attorneys, in-house attorneys and compliance personnel, corporate executives, government attorneys, and representatives of non-governmental organizations.

[146] Moreover, during the on-site visit, the representatives of USDOJ and the SEC emphasized that facilitation payments are discouraged by most companies, and the issue does not come up very often.<sup>100</sup> In this respect, the representatives noted that it used to be an issue, but most companies have a prohibition on facilitation payments, as the risks of violating the FCPA are not worth carrying out this type of payment. It was also observed, as noted in the Response, that if a facilitation payment is carried out, it would have to be recorded in the books and records of the company and be well justified, because of the risk of passing the fine line of what is permitted in the FCPA.

[147] In view of the above, the Committee takes note of the satisfactory consideration by the country under review of the recommendation.

[148] The Committee does have additional observations on the matter. As noted in the Report of the Third Round of the United States, Article VIII of the Inter-American Convention against Corruption contains no exceptions for facilitation payments. In this regard, the Committee reiterates the observation made on the matter, as it related to the issue of tax deduction:<sup>101</sup>

[149] *“[T]he Committee notes that facilitation payments are generally considered an illegal bribe in the countries in which they are paid. In a similar sense, the Committee notes that the principal domestic bribery statute in the country under review, 18 U.S.C. Section 201, which was examined in the Report on the United States for Second Round of Review, contains no such exception for facilitation or expediting payments made to domestic government officials or employees.”*

[150] During the on-site visit, the representatives of the USDOJ and the SEC noted that they were unaware if there were any legislative proposals or intention to eliminate the facilitation payment exception. In this respect, the representatives noted that the FCPA was the first legislation of its kind in the world and given that most national jurisdictions at that time did not have antibribery legislation in place, the exclusion of the facilitation payment could leave US companies in a disadvantage in conducting business overseas.

---

<sup>99</sup> Agreement between the United States of America, the United Mexican States, and Canada, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>

<sup>100</sup> The country under review notes that the FCPA’s bribery prohibition contains a narrow exception for “facilitating or expediting payments” which applies only when a payment is made to further “routine governmental action” that involves non-discretionary acts. Examples of “routine governmental action” include processing visas, providing police protection or mail service, and supplying utilities like phone service, power, and water. Routine government action does not include a decision to award new business or to continue business with a particular party.

<sup>101</sup> Report of the Third Round, pgs. 8 – 9, *supra* note 3.

[151] In this regard, the Committee notes that in the Report by the US House of Representatives, when considering the FCPA, noted, with respect to facilitation payments:<sup>102</sup>

[152] *“While payments made to assure or to speed the proper performance of a foreign official's duties may be reprehensible in the United States, the committee recognizes that they are not necessarily so viewed elsewhere in the world and that it is not feasible for the United States to attempt unilaterally to eradicate all such payments.”*

[153] The Committee notes, however, that since the passage of the FCPA, there have been significant national, regional and international developments in this respect, that has made the rationale for this exception, no longer valid.

[154] Within the inter-American system alone, the Inter-American Convention against Corruption, the first treaty of its kind, and ratified by all 34 member States of the OAS, requires the criminalization of acts of corruption, including that of bribery, making facilitation payments illegal if carried out in the countries in which they are paid, including, as noted previously, in the United States.

[155] As demonstrated in the MESICIC Hemispheric Report of the Second and Fifth Round, which addressed the issue of Acts of Corruption, all countries have criminalized bribery within their national legislation, with the most common recommendations being adjustments to those provisions to meet the elements found in Article VI of the Convention.<sup>103</sup>

[156] The Committee also notes that no other country in the region has such an exception in place. In this respect, while the United States-Mexico-Canada Trade Agreement, notes the harmful effects of facilitation payments, and commits each party to encourage enterprises to prohibit or discourage the use of facilitation payments; and take steps to raise awareness among its public officials of its bribery laws, with a view to stopping the solicitation and the acceptance of facilitation payments, in practice, this is solely applicable to the United States, given it is the only country that allows such an exception.

[157] Given the foregoing, with national, regional and international developments that have overtaken the initial rationale for the inclusion of facilitation payments as an exception in the FCPA, whereby all the countries in the region treat these payments as a criminal offense, and the position of the country under review in discouraging the use of such payments as well, the Committee believes that the country under review may consider legislative steps to remove the exception in its legislation. The Committee will formulate a recommendation. (See Recommendation 3.4.1 in section 3.4 of Chapter II of this Report)

### **3.2 New Developments with respect to the Provision of the Convention on Transnational Bribery.**

#### **3.2.1 New Developments with Respect to the Legal Framework.**

---

<sup>102</sup> House Report No. 95-640, <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2010/04/11/houseprt-95-640.pdf>. The Report also cited the Minority View, that is the party that does not hold the majority of seats in the House of Representatives, which noted: *“It is our understanding that the bill is not intended to reach “facilitating” or “grease” payments such as a gratuity paid to a customs official to speed the processing of documents, payments made to secure licenses or permits which would be issued in any event, or payments made under duress to protect a business investment. Although these kinds of payments would not be proper in the United States, we realize that they are a recognized part of doing business in certain foreign countries and agree that any legislation should not attempt to eliminate such payments.”*

<sup>103</sup> See Hemispheric Report for the Second Round of Review, pgs. 21 and 49, and Hemispheric Report for the Fifth Round of Review, pgs. 73 – 74, 123, available at: <http://www.oas.org/en/sla/dlc/mesicic/documentos.html>

[158] The country under review notes that it does not have anything to report regarding new developments with respect to the legal framework.<sup>104</sup>

### 3.2.2 New Developments with Respect to Technology.

[159] The country under review notes that it does not have anything to report regarding new developments with respect to technology.<sup>105</sup>

### 3.3 Results.

[160] In its Response to the Questionnaire, the country under review noted that it did not have anything to report.<sup>106</sup>

[161] During the on-site visit, however the representative of the SEC and the USDOJ noted that they do publish the outcomes of their enforcement actions and prosecutions online. In this respect, the Committee notes the results of the SEC FCPA enforcement actions that were set out in section 2.3 on results of the chapter on the Article III, Paragraph 10 of the Convention, Prevention of Bribery of Domestic and Foreign Public Officials.<sup>107</sup>

[162] Regarding the results maintained by USDOJ, it was noted that its Fraud section of the Criminal Division of the USDOJ issues a yearly Fraud Section Year in Review report on the work carried out, including that of the FCPA Unit.<sup>108</sup> In this respect, the last report published is for the year 2022.<sup>109</sup>

[163] In this regard, the report noted that the FCPA Unit charged 22 individuals, convicted 18, by which 15 pleaded guilty and 3 were convicted at trial.<sup>110</sup> It also noted that there were 5 corporate resolutions that imposed fines of more than \$1.36 billion dollars with respect to total global monetary amounts; more than \$859.6 million dollars with respect to total US monetary amounts; and more than \$606.5 million dollars with respect to total US criminal monetary amounts.<sup>111</sup>

[164] It also provides detailed information on significant corporate resolutions; corporate enforcement policy declinations; significant trials, pleas, and sentences; and significant individual indictments and guilty pleas.<sup>112</sup>

---

<sup>104</sup> Response to the Questionnaire, pg. 36, *supra* note 10.

<sup>105</sup> *Ibid.*

<sup>106</sup> *Ibid.*

<sup>107</sup> See paragraphs 133 – 134 of this Report.

<sup>108</sup> These reports are available at: <https://www.justice.gov/criminal/criminal-fraud>

<sup>109</sup> Fraud Section Year in Review, 2022, <https://www.justice.gov/criminal-fraud/file/1568606/download>. The country under review, in its observations to the draft preliminary report, noted that in February 2024, the 2023 Fraud Section Year in Review was published and is available online.

<sup>110</sup> *Ibid.*, pgs. 5 and 10. The Report notes that these numbers include certain charges brought and pleas entered under seal in 2020 and 2021 that were unsealed in 2022.

<sup>111</sup> *Ibid.*, pg. 6. The Report defines the terms “Total Global Monetary Amount,” “Total US Monetary Amount,” and “Total US Criminal Monetary Amount” as follows: “Total Global Monetary Amounts” are the total enforcement action amounts payable to both: (1) US criminal and civil authorities; and (2) foreign criminal and civil authorities. “Total US Monetary Amounts” are the total enforcement action amounts payable to U.S. criminal and civil authorities. “Total US Criminal Monetary Amounts” are the total criminal enforcement amounts payable: (1) to Department of Justice; and (2) through mandatory or permissive restitution or other compensation funds, pursuant to a plea agreement, Deferred Prosecution Agreement, or Non-Prosecution Agreement. The Total US Criminal Monetary Amount may include any or a combination of the following monetary components: criminal fine, criminal monetary penalty, criminal forfeiture, criminal disgorgement, restitution, and other compensation payments.

<sup>112</sup> *Ibid.*, pgs. 12 – 20.



[165] Moreover, the Fraud section maintains a website on the FCPA,<sup>113</sup> including that for FCPA Enforcement Actions. These enforcement actions are listed alphabetically, as well as chronologically, and can also be consulted by corporate enforcement actions or individual enforcement actions.<sup>114</sup>

[166] In this regard, the Committee acknowledges the efforts by the country under review to enforce the FCPA.

[167] The Committee also notes that the country under review observes that due to other available instruments, the United States rarely relies on or receives requests for mutual legal assistance or extradition pursuant to the Inter-American Convention against Corruption. Typically, assistance in corruption matters is sought under bilateral treaties, the UN Convention against Corruption, or the Anti-Bribery Convention of the Organization for Economic Cooperation and Development.

[168] The Committee notes, however, that the country under review, during the on-site visit, set out difficulties in maintaining results with respect to the assistance and cooperation provided to other member States with respect to transnational bribery. Representatives from the Office of International Affairs (OIA) of the USDOJ noted that mutual legal assistance requests in furtherance of corruption cases are not tracked because: (1) there is no legal requirement for such tracking under domestic law; (2) this type of tracking would require significant resources; (3) there is no specific guidance on what should be tracked, which would lead to inaccurate statistics; and (4) such statistics, especially if inaccurate, would not be indicative of the assistance provided or received through MLA requests. With respect to the inaccuracy of statistics, OIA noted, for example, that many corruption cases investigate fraud, false statements, and money laundering offenses, but not all fraud, false statements, and money laundering cases are corruption matters and, therefore, a database search for all requests involving such offenses would result in inaccurate statistics. Identification of corruption cases with any accuracy would necessitate a manual review of each case individually, which OIA does not have the resources to conduct. As a result, there were no results that could be provided on the number of requests for assistance and cooperation received from member States of the Convention on this offense, nor for assistance and cooperation requests made by the country under review to member States of the Convention.

[169] The Committee notes, however, that the country under review has been able to track the assistance and cooperation provided, or requested, for corruption or bribery offenses, and in particular those that fall under the FCPA, in other international anticorruption mechanisms.<sup>115</sup>

[170] Given the foregoing, the Committee considers that the country under review should consider maintaining statistics on the number of assistance and cooperation requests received from State Parties to the Convention with respect to the offense of transnational bribery. Similarly, the country under review should also consider maintaining statistics on the number of assistance and cooperation requests made to State Parties to the Convention with respect to the offense of transnational bribery. The Committee will formulate recommendations. See Recommendations 3.4.2 and 3.4.3 in section 3.4 of Chapter II of this Report)

### **3.4 Recommendations.**

[171] In light of the observations made in sections 3.1, and 3.3 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendations:

---

<sup>113</sup> See Foreign Corrupt Practices Act, <https://www.justice.gov/criminal/criminal-fraud/foreign-corrupt-practices-act>

<sup>114</sup> Enforcement Actions, <https://www.justice.gov/criminal/criminal-fraud/enforcement-actions>

<sup>115</sup> See, for example, the 2020 OECD Phase 4 Report of the United States on Implementing the OECD Convention, pg. 78, <https://www2.oecd.org/daf/anti-bribery/United-States-Phase-4-Report-ENG.pdf>

- 3.4.1 Consider taking the legislative steps to remove the facilitation payment exception in the Foreign Corrupt Practices Act. (See paragraph 157 in section 3.1 of Chapter II of this Report)
- 3.4.2 Maintain statistics on the number of assistance and cooperation requests received from States Parties of the Inter-American against Corruption, with respect to the offense of transnational bribery. (See paragraph 170 in section 3.3 of Chapter II of this Report)
- 3.4.3 Maintain statistics on the number of assistance and cooperation requests made to State Parties of the Inter-American against Corruption, with respect to the offense of transnational bribery. (See paragraph 170 in section 3.3 of Chapter II of this Report)

#### **4. ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION).**

##### **4.1 Follow-Up to the Implementation of the Recommendations Formulated in the Third Round.**

[172] The United States has not criminalized illicit enrichment as provided in Article IX of the Convention, on the ground that it places the burden of proof on the defendant, which is inconsistent with the United States constitution and fundamental principles of the United States legal system, and therefore made a reservation with respect to this Article of the Convention upon deposit of its instrument of ratification. The Committee took note of the explanation offered by the country under review in the Report of the Third Round, and no recommendations were formulated on this topic.<sup>116</sup>

##### **4.2 New Developments with respect to the provision of the Convention on Illicit Enrichment.**

###### **4.2.1 New Developments with Respect to the Legal Framework.**

[173] The country under review did not present new developments with respect to the legal framework in relation to illicit enrichment.<sup>117</sup>

###### **4.2.2. New Developments with Respect to Technology.**

[174] The country under review did not present new developments with respect to technology in relation to illicit enrichment.<sup>118</sup>

##### **4.3 Results.**

[175] In its Response to the Questionnaire the country under review did not provide any results.<sup>119</sup> The Committee observes, however, that Article IX of the Convention provides that any State Party that has not established illicit enrichment as an offense, as in the case of that United States, “shall, insofar as its laws permit, provide assistance and cooperation with respect to this offense as provided in this Convention.”

---

<sup>116</sup> Report of the Third Round, pg. 20, *supra* note 3.

<sup>117</sup> Response to the Questionnaire, pg. 36, *supra* note 10.

<sup>118</sup> *Ibid.*

<sup>119</sup> *Ibid.*, pg. 37.

[176] The Committee observes that in the Report of the Third Round, the country under review noted the following, which remains relevant:<sup>120</sup>

[177] *“The United States of America intends to assist and cooperate with other States Parties pursuant to paragraph 3 of Article IX of the Convention to the extent permitted by its domestic law... The Central Authority for the United States in mutual legal assistance in criminal matters is DOJ’s Office of International Affairs (OIA) in the Criminal Division. OIA maintains records of more than 50,000 mutual legal assistance matters, over 40,000 of which are completed and closed. Many codes in the system could encompass bribery of a public official and illicit enrichment, and it is not clear from the database which cases specifically address those offenses covered under the corruption provisions of the Convention. Those offenses could be coded as bribery, embezzlement, tax evasion, official corruption, foreign corrupt public officials, and the Foreign Corrupt Practices Act.”*

[178] The Committee notes that the difficulty set out in the Report of the Third Round was also observed by the representatives of the USDOJ Office of International Affairs during the on-site visit, regarding maintaining statistics on assistance and cooperation. The Committee observes, however, that the country under review, despite these challenges, was able to compile statistics as it related to transnational bribery, as noted in the consideration of the topic above, and could also undertake to maintain statistics on assistance and cooperation as it relates to illicit enrichment. Given the foregoing, the Committee will formulate a recommendation in this regard. (See the sole Recommendation in section 4.4 of Chapter II of this Report)

#### **4.4 Recommendations**

[179] In light of the observations formulated in section 4.3 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendation:

- Maintain statistics on the provision of assistance and cooperation to States Parties of the Inter-American Convention against Corruption, with respect to the offense of illicit enrichment. (See paragraph 178 in section 4.3 of Chapter II of this Report)

### **5. NOTIFICATION OF CRIMINALIZATION OF TRANSNATIONAL BRIBERY AND ILLICIT ENRICHMENT (ARTICLE X OF THE CONVENTION)**

[180] No recommendations were made to the country under review regarding this provision of the Convention.

### **6. EXTRADITION (ARTICLE XIII OF THE CONVENTION).**

#### **6.1 Follow-Up to the Implementation of the Recommendations Formulated in the Third Round.**

[181] No recommendations were made to the country under review regarding this provision of the Convention.

#### **6.2 New Developments with respect to the Provision of the Convention on Extradition.**

##### **6.2.1 New Developments with respect to the Legal Framework.**

[182] The country under review did not present new developments with respect to the legal framework in relation to extradition.

---

<sup>120</sup> Report of the Third Round, pgs. 20 – 21, *supra* note 3.

### **6.2.2 New Developments with respect to Technology.**

[183] The country under review did not present new developments with respect to technology in relation to extradition.

### **6.3 Results.**

[184] The committee notes that no results were provided by the country under review with respect to extradition. In this respect, during the on-site visit, the representative from the USDOJ Office of International Affairs noted the difficulty in tracking extradition requests for acts of corruption, given the manner requests are entered into their case management system. This was noted in the Report of the Third Round, where the country under review observed:<sup>121</sup>

[185] “[C]orruption offenses can be coded in OIA’s [Office of International Affairs] electronic case management system as bribery, embezzlement, tax evasion, official corruption, foreign corrupt public official, and Foreign Corrupt Practices Act cases. The universe of corruption offenses handled by OIA may be larger than the statistics included herein indicate, because the cases may be coded as fraud, of which there are more than 800 pending extradition cases.”

[186] The country under review also noted that since the Report of the Third Round, the case-tracking system maintained by USDOJ’s Office of International Affairs has changed and cannot reliably capture corruption cases.

[187] Despite these difficulties, the Committee believes the country under review should consider maintaining statistics, as provided in the Third Round, on extradition requests received from State Parties of the Convention, as well as those made to State Parties to the Convention. The Committee will formulate recommendations in this regard. (See Recommendations 6.4.1 and 6.4.2 in section 4.4 of Chapter II of this Report)

### **6.4 Recommendations.**

[188] In light of the observations formulated in section 6.3 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendations:

- 6.4.1. Maintain statistics when the United States receives an extradition request from a State Party of the Inter-American Convention against Corruption. (See paragraph 187 in section 6.3 of Chapter II of this Report)
- 6.4.2. Maintain statistics when the United States makes an extradition request to a State Party of the Inter-American Convention against Corruption. (See paragraph 187 in section 6.3 of Chapter II of this Report)

## **III. ANALYSIS, CONCLUSIONS AND RECOMMENDATIONS ON IMPLEMENTATION BY THE COUNTRY UNDER REVIEW OF THE CONVENTION PROVISION SELECTED FOR THE SIXTH ROUND**

---

<sup>121</sup> *Ibid*, pg. 24.

## 1. BANK SECRECY (ARTICLE XVI OF THE CONVENTION)

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

[189] The United States has a set of provisions related to bank secrecy, most notably the following:<sup>122</sup>

[190] – The Right to Financial Privacy Act,<sup>123</sup> under 12 U.S.C. Section 3402, provides that no Government authority may have access or obtain copies of, or the information contained in financial records of any customer from a financial institution, unless the financial records are reasonably described and authorized by the customer, or obtained through an administrative subpoena, a search warrant, a judicial subpoena or by making a formal written request.<sup>124</sup>

[191] In this regard, the country under review notes that it has taken the position before its courts that assistance may not be declined as a result of privacy provisions of banking law,<sup>125</sup> as case law holds that the Right to Financial Privacy Act does not apply to the execution of foreign requests for legal assistance: *Young v. U.S. Dept. of Justice*, 882 F.2d 633, 639 (2d Cir. 1989), cert. denied, 493 U.S. 1072 (1990); and *In re Letters of Request from the Supreme Court of Hong Kong*, 821 F. Supp. 204, 211 (S.D.N.Y. 1993); *In re Letter of Request for Judicial Assistance from the Tribunal Civil de Port-Au Prince, Republic of Haiti*, 669 F. Supp. 403, 407 (S.D. Fla. 1987).<sup>126</sup>

[192] – The Foreign Evidence Efficiency Act, under 18 U.S.C. Section 3512, which authorizes a federal judge to issue “such orders as may be necessary to execute [the] request,” including: (1) search warrants under Rule 41 of the Federal Rules of Criminal Procedure; (2) orders for electronic records under 18 U.S.C. Section 2703; (3) orders for pen registers or trap and trace devices under 18 U.S.C. Section 3123; and (4) orders appointing a person to direct the taking of testimony or statements and/or the production of documents or other things.<sup>127</sup> In addition, a federal judge may order any necessary procedures to facilitate the execution of the request, including any procedures requested by the foreign authority to facilitate its use of the evidence (18 U.S.C. Section 3512(a)(1)). Section 3512 also authorizes any person appointed to direct the taking of testimony or statements and/or the production of documents. The appointed person has the authority: (1) to issue an order requiring a person to appear and/or to produce documents or other things; (2) to administer any necessary oaths; and (3) to take testimony or statements and to receive documents or other things (18 U.S.C. Section 3512(b)(2)). In ordering a person to appear and/or to produce documents or other things, the person appointed, commonly referred to as the “commissioner,” typically uses a subpoena entitled “Commissioner’s Subpoena.” Any such subpoena may be served or executed anywhere in the United States (18 U.S.C. Section 3512(f)).

---

<sup>122</sup> The country under review, in its Response to the Questionnaire noted that bank secrecy is not a legal concept in the United States, see Response to the Questionnaire, pg. 3, *supra* note 10.

<sup>123</sup> Right to Financial Privacy Act, 12 U.S.C. Chapter 35, <https://www.law.cornell.edu/uscode/text/12/chapter-35>

<sup>124</sup> Under the Right to Financial Privacy Act, ‘government authority’ is defined as any agency or department of the United States, or any officer, employee, or agent thereof. ‘Financial institution’ means, among other things, any office of a bank, savings bank, card issuer, industrial loan company, trust company, savings association, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands. ‘Financial record’ means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer’s relationship with the financial institution. ‘Customer’ means any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person’s name. ‘Person’ means an individual or a partnership of five or fewer individuals.

<sup>125</sup> Response to the Questionnaire, pg. 3, *supra* note 10.

<sup>126</sup> Additional Information on Topics Reviewed, *supra* note 76, pg. 1.

<sup>127</sup> Foreign Evidence Efficiency Act, 18 U.S.C. Chapter 223, <https://www.law.cornell.edu/uscode/text/18/3512>

[193] – Regarding assistance provided to other State Parties to the Inter-American Convention against Corruption, the general rule is that a formal mutual legal assistance request is required to obtain bank account records located in the United States.<sup>128</sup> For countries that have a Mutual Legal Assistance Treaty with the country under review, requests must be made to the designated Central Authority, which is the USDOJ Office of International Affairs, who is responsible for assisting foreign prosecutors, investigating judges and law enforcement authorities to secure information and evidence located in the United States for use in criminal investigations, trials and related proceedings in a foreign country.<sup>129</sup> In this regard, the country under review has mutual legal assistance treaties with the following State Parties to the Convention: Antigua and Barbuda, Argentina, The Bahamas, Barbados, Belize, Brazil, Canada, Dominica, Grenada, Jamaica, Mexico, Panama, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, Uruguay, and Venezuela.<sup>130</sup>

[194] Regarding those State Parties that have not entered into a mutual legal assistance treaty with the United States, the USDOJ Office of International Affairs may also execute non-treaty requests for assistance based on comity and reciprocity. In the absence of a bilateral mutual legal assistance treaty or an applicable multilateral convention to which the United States and the requesting country are parties, the Office accepts non-treaty requests in form of letters rogatory and letters of request.<sup>131</sup>

[195] The country under review also has online a document containing frequently asked questions regarding legal assistance in criminal matters.<sup>132</sup> This document, which is also available in French, Portuguese, and Spanish, sets out the role of the USDOJ Office of International Affairs, and the type of assistance that is available from the United States, and the manner to make a request, among other things.<sup>133</sup>

[196] Regarding the type of assistance available from the United States, it includes, but not limited to producing documents, records or other items. With respect to the manner to make a request to the United States, it provides a list of information required when a country lacks a bilateral mutual legal assistance treaty, and no multilateral convention applies, which is also typically required for requests submitted pursuant to a mutual legal assistance treaty.<sup>134</sup> The information required includes, among other things: identification of the competent authority conducting the investigation or proceeding to which the request for assistance relates, including the name, official position, and contact information of that authority; the description of the offense to which the request relates, including the text of the relevant laws and the applicable penalty; a description of the facts that are alleged to constitute the offense; and a statement of the purpose for which the evidence, information, or other assistance is sought, including the nexus between the assistance sought and the offense. To the extent applicable, it should also provide, among other things: information on the identity and location of any person from whom evidence is sought; identity and location of a person to be served with notice or legal documents, the person's relationship to the proceeding, and a description of how service is to be made; and a precise description of the place or person to be searched and of the items to be seized.<sup>135</sup>

[197] It also provides that the USDOJ Office of International Affairs will review the foreign assistance request to determine if it complies with a bilateral mutual legal assistance treaty, if applicable; contains all

---

<sup>128</sup> Response to the Questionnaire, pg. 3, *supra* note 10.

<sup>129</sup> Frequently Asked Questions Regarding Legal Assistance in Criminal Matters, Office of the International Affairs, Criminal Division, US Department of Justice, pg. 2, <https://www.justice.gov/criminal-oia/file/1498811/download>

<sup>130</sup> Mutual Legal Assistance Treaties of the United States, <https://www.justice.gov/criminal-oia/file/1498806/download>

<sup>131</sup> Frequently Asked Questions, pg. 3, *supra* note 129.

<sup>132</sup> *Ibid.*

<sup>133</sup> For the French, Portuguese, and Spanish versions of this document, please see: <https://www.justice.gov/criminal/criminal-oia/resources-foreign-authorities>

<sup>134</sup> Frequently Asked Questions, pg. 4, *supra* note 129.

<sup>135</sup> *Ibid.*

the required information to allow identification and location of the assistance or evidence requested; is not subject to a ground for refusal; and contains sufficient information to meet the US legal standards for execution. In the case of bank and business records, the US legal standard is relevance, and it is carried out by subpoena approved by a court.<sup>136</sup>

[198] Regarding the obligation not to use any information received by the United States for any purpose other than the proceeding for which the information was requested, the country under review notes that the USDOJ Office of International Affairs, in transmitting the evidence to the prosecutors in the field, reminds them of the use limitation and the need to have the Office reach out to their foreign counterparts to obtain consent of the requested State if they want to use the evidence for another matter.<sup>137</sup> In addition, the United States also is guided by the provisions found in the bilateral mutual legal assistance treaties.<sup>138</sup> In this respect, the Committee notes that the bilateral mutual legal assistance treaties entered into by the United States all have a provision on the limitation of use of information received, whereby, in general terms, the requesting State shall not use any information or evidence obtained under a treaty in any investigation, prosecution, or proceeding other than that described in the request, without the prior consent of the requested State.

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

[199] With respect to the provisions on bank secrecy that the Committee has reviewed on the basis of the information available to it, they constitute a set of measures that are pertinent for promoting the purposes of the Convention. However, the Committee considers it appropriate to formulate the following observations:

[200] The Committee observes that the use of banking or financial information received by the country under review is limited, in that it cannot be used for any purpose, other than described in the request without prior consent from the central authority of the requested State. The Committee notes that the country under review also is a State Party to various multilateral conventions that also limit the use of information received in this respect, such as the Interamerican Convention against Corruption and the Interamerican Convention on Mutual Assistance in Criminal Matters; among others.<sup>139</sup>

[201] Moreover, the country under review, in transmitting the evidence obtained abroad, reminds prosecutors of the use of limitation, and the need to reach out to their foreign counterparts to obtain consent to use the evidence for another matter.

[202] The Committee observes that while this process helps ensure that the banking information received by the United States is only used for the purpose for which the information was requested, the country under review may consider evaluating if current practices sufficiently protect the confidentiality of applicable banking information as required under Article XVI(2) of the Convention. The Committee will formulate a recommendation in this regard. (See Recommendation 1.4.1 in section 1.4 of Chapter III of this Report)

[203] The Committee also observes the absence of deadlines for processing and responding to requests. During the on-site visit, the representative from the USDOJ Office of International Affairs noted that under US law, there are no deadlines in place, rather, there are internal ones, which the Office attempts to meet. It was also noted that once a request is received, the request is reviewed, a notification sent to the

---

<sup>136</sup> *Ibid.*, pg. 5.

<sup>137</sup> Response to the Questionnaire, pg. 4, *supra* note 3.

<sup>138</sup> *Ibid.*

<sup>139</sup> See Article 25 of the Interamerican Convention on Mutual Legal Assistance, <http://www.oas.org/juridico/english/Sigs/a-55.html#United%20States> as well as Mutual Legal Assistance Treaties of the United States, pg. 8, *supra* note 129.

Requesting State, and updates may be provided if one is requested. During the on-site visit, mention was also made that urgent requests can be made, and a justification is required, and deadlines are considered if one is made in a request. Subpoenas issued to financial institutions may demand production of records within approximately 3 – 4 weeks, and the USDOJ may provide an extension of time to the financial institution upon request, in particular when the information requested is extensive.

[204] The Committee notes, that during the on-site visit, mention was made that it was difficult for the USDOJ Office of International Affairs to meet its internal deadlines to respond to requests, given that they are understaffed. Mention was also made that there were approximately 13000 requests currently pending. Additionally, it should also be noted that delays in execution of requests are attributable to a number of factors, including requests without sufficient information to meet U.S. legal standards, missing or poor translations, and references to attachments that are not provided.

[205] In view of the foregoing, the Committee deems it beneficial for the country under review to consider providing the necessary human resources to the USDOJ Office of International Affairs, so that they might be able to fully carry out its functions of responding to and carrying out request for assistance, in general, but specifically with respect to requests for banking and financial information, within available resources. In addition, it would be beneficial to consider regularly evaluating if existing policies and practices allow for the response to requests for assistance in a timely manner. (See Recommendations 1.4.2 and 1.4.3 in section 1.4 of Chapter III of this Report).

[206] The Committee also notes that the USDOJ Office of International Affairs provided the previously cited document online, ‘Frequently Asked Questions Regarding Legal Assistance in Criminal Matters,’ which is also available in French, Portuguese, and Spanish, to assist requesting states with a mutual legal assistance request. This document sets out the type of assistance that is available from the United States, and the manner to make a request, among other things, and in the case of bank and business records, provides that the US legal standard to meet is relevance, and receiving this information is carried out by subpoena approved by a court.<sup>140</sup>

[207] Although this resource is available online, during the onsite visit, the representative from the USDOJ Office of International Affairs noted that one challenge in responding to requests is the lack of sufficient information received from Requesting states, such as not providing the name of the financial institution where the requested information is contained. In this respect, the Committee believes that the country under review could consider providing more detailed information in the resources offered to requesting States. For example, it could further specify, in its Frequently Asked Questions document, that requesting States should specifically identify the nature of the banking or financial records sought, the name and location of the financial institution where the records are believed to be located, the account number pertaining to the records, and why the records will assist in advancing a case. In this manner, requesting States will be provided further guidance on what is required by the United States to carry out a mutual legal assistance request as it pertains to bank or financial records, and may help in reducing the overall timeframe for carrying out such a request. The Committee will formulate a recommendation in this regard. (See Recommendation 1.4.4. in section 1.4 of Chapter II of this Report).

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

[208] The country under review, in its Response to the Questionnaire, noted the following with respect to results:<sup>141</sup>

---

<sup>140</sup> Frequently Asked Questions, pg. 5, *supra* note 129.

<sup>141</sup> Response to the Questionnaire., pg. 5, *supra* note 3.



[209] *“Because confidentiality is invoked in the majority of cases, the United States is not in a position to provide information regarding the requests received. In any event, the United States does not track requests implicating bank secrecy.”*

[210] During the on-site visit, it was further explained that requests for financial information could possibly be tracked, however, not broken down if it was related to an act of corruption. It was noted, as set out in the discussion of results in transnational bribery and illicit enrichment, corruption cases are not tracked, and many cases are classified as bribery, fraud, or embezzlement.

[211] With respect to sanctions imposed on financial institutions for not complying with a court order to provide financial information on a request for assistance, the country under review noted the following, subsequent to the on-site visit:<sup>142</sup>

[212] *“The United States does not track this as it has never been an issue. As explained during the meeting, the U.S. Department of Justice representative was not aware of any instances where a financial institution has failed to comply with a subpoena for a production of records. Although Department of Justice’s Office of International Affairs has had instances where we have had to explain our use of a commissioner’s subpoena under 18 USC 3512 to financial institution, it has ultimately been able to convince financial institutions to produce records short of a show cause hearing in court. As a result, the Department of Justice has never reached a point where sanctions were needed.”*

[213] The Committee notes the challenges to the country under review to maintain specific results on requests for assistance as it relates to an act of corruption. However, it further observes that despite these challenges, it has been able to provide these kinds of results in past rounds of review of the MESICIC, as well as in other important international anticorruption review mechanisms. The Committee also notes that confidentiality may be invoked in the requests for banking information. The Committee would like to highlight, however, that the information requested regarding results for Bank Secrecy in the Questionnaire for the Sixth Round of Review is general in nature and does not require detailed information on the particulars of a request.

[214] In that respect, considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results on providing assistance and cooperation with respect to information held by financial institutions located in the United States related to an investigation or prosecution of an act of corruption, the Committee believes the country under review may consider maintaining statistics on the number of requests for assistance received from a State Party to the Convention that implicated information protected by bank secrecy for the purposes of Article XVI of the Convention. (See Recommendation 1.4.5 in section 1.4 of Chapter III of this Report)

[215] Likewise, the country under review could also consider maintaining statistics on the number of requests made to other States Parties of the Convention, on information held by financial institutions located in a requested State, related to an investigation of an act of corruption, and, if available, the number of requests denied by the requested state solely because of bank secrecy laws. (See Recommendation 1.4.6 in section 1.4 of Chapter III of this Report)

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

[216] Based on its review of the implementation of Article XVI of the Convention in the country under review, the Committee offers the following conclusion:

---

<sup>142</sup> Additional Information on Topics Reviewed, pg. 1, *supra* note 76.

[217] **The United States has adopted measures regarding assistance with respect to Bank Secrecy, as described in Chapter III, Section 1 of this Report.**

[218] In light of the observations made in that section, the Committee suggests that the country under review consider the following recommendations:

- 1.4.1 Routinely evaluate practices used to ensure that banking information received by the United States is only used for the purpose for which the information was requested, pursuant to Article XVI (2) of the Convention. (See paragraph 210 in section 1.2 of Chapter III of this Report)
- 1.4.2 Provide the necessary human resources to the USDOJ Office of International Affairs, so that they might be able to fully carry out its functions of responding to and carrying out request for assistance, in general, but specifically with respect to requests for banking and financial information, within available resources. (See paragraph 213 in section 1.2 of Chapter III of this Report)
- 1.4.3 Regularly evaluate if existing policies and practices allow for processing and responding to requests for assistance by another State Party for banking information related to an act of corruption in a timely manner. (See paragraph 213 in section 1.2 of Chapter III of this Report)
- 1.4.4 Provide online further specific instructions on the information required for a successful request for assistance from a Requesting State, with respect to accessing banking or financial records related to an act of corruption. (See paragraph 215 in section 1.2 of Chapter III of this Report)
- 1.4.5 Maintain statistics on the number of requests for assistance received from a State Party to the Inter-American Convention against Corruption on information held by a financial institution, that is related to an investigation of an act of corruption. (See paragraph 222 in section 1.3 of Chapter III of this Report)
- 1.4.6 Maintain statistics on the number of requests made to other States Parties of the Inter-American Convention against Corruption, on information held by financial institutions located in the requested State, that is related to an investigation of an act of corruption, as well as the number of requests denied because of bank secrecy. (See paragraph 223 in section 1.3 of Chapter III of this Report)

#### **IV. BEST PRACTICES**

[219] The country under review did not identify any best practices regarding implementation of the provisions of the Convention selected for the Third and Sixth Rounds.<sup>143</sup>

---

<sup>143</sup> Response to the Questionnaire, pgs. 38 – 39, *supra* note 3.

ANNEX

**AGENDA OF THE ON-SITE VISIT TO THE UNITED STATES OF AMERICA**

<b><u>Tuesday, October 17, 2023</u></b>	
14:30 hrs. – 15:00 hrs. <b>OAS Headquarters, Gabriela Mistral Room, 1889 F Street</b>	<b>Coordination meeting between the representatives of the member states of the subgroup and the Technical Secretariat</b>
15:00 hrs. – 15:30 hrs. <b>OAS Headquarters, Gabriela Mistral Room, 1889 F Street</b>	<b>Coordination meeting between the representatives of the country under review, the member states of the subgroup and the Technical Secretariat</b>
<b><u>Wednesday, October 18, 2023</u></b>	
10:00 hrs. – 12:00 hrs. <b>OAS Headquarters, Gabriela Mistral Room, 1889 F Street</b>	<b>Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics, or researchers</b>
	<b><u>Session:</u> Bank Secrecy and Follow-Up of the Recommendations of the Third Round</b> <b><u>Topics:</u></b> <ul style="list-style-type: none"><li>• <b>Challenges in the fight against corruption in the United States</b></li><li>• <b>Bank Secrecy</b></li><li>• <b>Transnational Bribery</b></li><li>• <b>Denial of Tax Benefits</b></li><li>• <b>Prevention of Bribery</b></li></ul>
	<b><u>Participants:</u></b> Julia Yansura, Program Director for Latin America and the Caribbean, Global Financial Integrity  Gary Kalman, Executive Director, Transparency International-USA  Erica Hanichak, Government Affairs Director, The FACT Coalition  Robin Lewis, Senior Research Associate and Associate Fellow, The Brookings Institution

12:00 hrs. – 14:00 hrs.	<b>Lunch</b>
14:00 hrs. – 16:30 hrs. <b>OAS Headquarters, Gabriela Mistral Room, 1889 F Street</b>	<b>Panel 1: Bank Secrecy</b>
	<ul style="list-style-type: none"> <li>• <b>Currency and Foreign Transactions Reporting Act</b></li> <li>• <b>Confidentiality and Privacy</b></li> <li>• <b>Internal Process and Appeals</b></li> <li>• <b>Use of Information</b></li> <li>• <b>International Cooperation</b></li> <li>• <b>Results</b></li> </ul> <p><u>Participants:</u></p> <p>Young Lee, Director, Office of Terrorist Financing and Financial Crime, Treasury Department</p> <p>Samuel Barnett, Policy Advisor, Office of Terrorist Financing and Financial Crime, Treasury Department</p> <p>Linda Otani McKinney, Deputy Associate Director, Office of International Affairs, Justice Department</p> <p>Amy Granger, Attorney/Adviser, Office of the Legal Adviser, State Department</p>
16:30 hrs. – 17:00 hrs.	<b>Informal meeting</b> between the representatives of the member states of the subgroup and the Technical Secretariat.
<b><u>Thursday, October 19, 2023</u></b>	
9:00 hrs. – 12:00 hrs. <b>OAS Headquarters, Gabriela Mistral Room, 1889 F Street</b>	<b>Panel 2: Denial of Tax Benefits</b>
	<ul style="list-style-type: none"> <li>• <b>Requests for Information</b></li> <li>• <b>Computer Programs</b></li> <li>• <b>Institutional Coordination</b></li> <li>• <b>Training Programs</b></li> <li>• <b>Procedures and Indicators</b></li> </ul>

	<p><u>Participants:</u> Wazirah Allen, International Liaison, IRS Criminal Investigation, Internal Revenue Service</p>
12:00 hrs. – 14:00 hrs.	<b>Lunch</b>
14:00 hrs. – 17:00 hrs. <b>OAS Headquarters, Gabriela Mistral Room, 1889 F Street</b>	<b>Panel 3: Illicit Enrichment/Extradition</b>
	<ul style="list-style-type: none"> <li>• <b>Illicit Enrichment</b></li> <li>• <b>Extradition</b></li> </ul>
	<p><u>Participants:</u> Linda Otani McKinney, Deputy Associate Director, Office of International Affairs, Justice Department  Amy Granger, Attorney/Adviser, Office of the Legal Adviser, State Department</p>
17:00 hrs. – 17:30 hrs.	<b>Informal meeting</b> between the representatives of the member states of the subgroup and the Technical Secretariat.
<b><u>Friday, October 20, 2023</u></b>	
09:00 hrs. – 12:00 hrs. <b>OAS Headquarters, Gabriela Mistral Room, 1889 F Street</b>	<b>Panel 4: Prevention of Bribery/Transnational Bribery</b>
.	<p><u>Prevention of Bribery</u></p> <ul style="list-style-type: none"> <li>• Awareness Campaigns</li> <li>• Private Sector</li> <li>• Review Methods of Accounting Records</li> <li>• Manuals, Guidelines, or Directives</li> <li>• Results</li> </ul> <p><u>Transnational Bribery</u></p> <ul style="list-style-type: none"> <li>• Facilitation Payments</li> <li>• Results</li> </ul>

	<p><u>Participants:</u></p> <p>Jackie O'Reilly, Senior Special Counsel, Office of International Affairs, Securities and Exchange Commission</p> <p>Patrick Foley, Senior Special Counsel, Office of Chief Accountant, Securities and Exchange Commission</p> <p>Charles Cain, Chief FCPA Unit, Securities and Exchange Commission</p> <p>Estee Levine, Assistant Director, Official of International Affairs, Securities and Exchange Commission</p> <p>David Fuhr, Acting Chief, FCPA Unit, Justice Department</p> <p>Amy Granger, Attorney/Adviser, Office of the Legal Adviser, State Department</p>
12:00 – 12:30 hrs.	<b>Final meeting</b> between the representatives of the country under review, the member states of the subgroup and the Technical Secretariat
12:30 hrs.	<b>Informal meeting</b> between the representatives of the member states of the subgroup and the Technical Secretariat.

**CONTACT AUTHORITY FROM THE COUNTRY UNDER REVIEW FOR COORDINATION  
OF THE ON-SITE VISIT, AND REPRESENTATIVES OF THE MEMBER STATES OF THE  
PRELIMINARY REVIEW SUBGROUP AND THE TECHNICAL SECRETARIAT OF THE  
MESICIC**

**COUNTRY UNDER REVIEW**

**UNITED STATES OF AMERICA**

**Kellen McClure**

Lead Expert  
Anticorruption Advisor, Office of Global Programs and Policy  
Bureau of International Narcotics and Law Enforcement Affairs  
U.S. Department of State

**MEMBER STATES OF THE PRELIMINARY REVIEW SUBGROUP:**

**SAINT LUCIA**

**Tina Louison**

Lead Expert  
Solicitor General

**THE BAHAMAS**

**Kenrah Newry**

Alternate Expert  
Acting Deputy Director of Legal Affairs  
Office of the Attorney-General and Ministry of Legal Affairs

**TECHNICAL SECRETARIAT OF THE MESECIC**

**Rodrigo Silva**

Senior Legal Officer  
Department of Legal Cooperation  
OAS Secretariat for Legal Affairs

**Camila Tort**

Consultant  
Department of Legal Cooperation  
OAS Secretariat for Legal Affairs

**Pedro Lupera**

Consultant  
Department of Legal Cooperation  
OAS Secretariat for Legal Affairs