

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

FOR FOLLOW-UP ON THE IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED AND PROVISIONS REVIEWED IN THE THIRD ROUND AND FOR THE REVIEW OF THE CONVENTION PROVISIONS SELECTED FOR THE SIXTH ROUND

INTRODUCTION

The *Report of Buenos Aires^{1/}* and the *Rules of Procedure and Other Provisions^{2/} of the Committee of Experts on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption* (hereinafter, as applicable, *Report of Buenos Aires, Rules, the Committee, Mechanism, and Convention*) provide that the Committee shall “devise a methodology for the review of the implementation of the provisions of the Convention selected to be reviewed in each round, designed to ensure that sufficient reliable information is obtained.”

At its Thirty-Third Meeting, held on September 9 to 12, 2019, the Committee chose, as topics for review during the Sixth Round, those relating to Article XVI of the Convention, which refer to "Bank Secrecy." In addition, with regard to the follow-up of recommendations, the Committee took the same view as that expressed at the Fourth Meeting of the Conference of the MESICIC States Parties and agreed that, in the Sixth Round, the Committee would follow-up on the recommendations formulated in the Third Round, including the consideration of any new and relevant information or developments that would allow the Committee to determine the continued validity of the recommendations and measures suggested in the reports of the Third Round and, with regard to those deemed still valid, to assess whether the state has given them satisfactory consideration or whether additional attention is required or, when applicable, to restate or reformulate them.

In addition, it will review new developments in the States in connection with the Convention provisions selected for the Third Round, taking into account such aspects as the regulatory framework, technological developments, and results, and the relevant observations and recommendations will be made.

Furthermore, Article 29 of the Rules provides that each state party shall submit information on the implementation of the recommendations in the standard format that the Committee shall provide as an annex to the Questionnaire. Article 29 also establishes that, “with respect to the implementation of recommendations, the State Party shall refer to any difficulties that may have arisen in the process,” and that, “should it deem it to be appropriate, the State Party may also identify the domestic agencies that have participated in implementing the recommendations, as well as identify specific technical assistance or other needs connected with the implementation of the recommendations.”

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1. The Report of Buenos Aires (document AG/RES. 1784 (XXXI-O/01)) is available at: www.oas.org/juridico/english/doc_buenos_aires_en.pdf
 2. The Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC (document SG/MESICIC/doc.9/04 rev. 5, is available at: www.oas.org/juridico/english/mesicic_rules.pdf

In addition, at its Eighteenth meeting, in keeping with recommendation 6 of the Third Meeting of the Conference of MESICIC States Parties, the Committee adopted the *Methodology for Conducting on-Site Visits*,^{3/} which, according to provision 2 thereof, constitute a stage in the Committee's process of analyzing the implementation, within a round of review, of the corresponding selected provisions of the *Convention* and of the recommendations formulated to each of the States Parties in the previous round(s) regarding which follow-up is being performed, in compliance with the terms of the *Report of Buenos Aires*, Article 33 of the *Rules*, and the decisions adopted by the Committee in connection with the respective round.

In light of the above, this document contains the methodology for the review of the implementation of the provision of the Convention selected in the framework of the Sixth Round and for follow-up on the recommendations formulated by the Committee in the country reports adopted in the Third Round. To this end, the document refers to the objective of the review in the Sixth Round, to its framework, and the general and specific criteria used to guide the review of the provision selected in the Sixth Round; considerations with respect to the scope of this review and follow-up on the recommendations formulated in the country reports in the Third Round; the identification of best practices by the States under review; sources of information, the review process; responses to the questionnaire; country reports; and participation of civil society organizations and/or, *inter alia*, private sector organizations, professional associations, academics, or researchers; and the application of this methodology to the countries that were not party to the MESICIC when the Third Round was carried out, or were not reviewed in it.

I. OBJECTIVE OF THE REVIEW IN THE SIXTH ROUND

Within the framework of the purposes of the *Convention* and the *Mechanism*, the objective of the review in the Sixth Round will be to follow up on the implementation in each State Party of the Convention provision selected in the Sixth Round, by reviewing the existence of a legal framework and of other measures for the implementation of that provision and, assuming they exist, of their adequacy for the purposes of the *Convention*, and by reviewing the State Party's results and progress. Its purpose will also be to follow-up on progress, information, and new developments in connection with the recommendations formulated in the Third Round, in accordance with Article 29 of the *Rules*, and taking into account the decisions adopted by the Committee at its Thirty-Third meeting, pursuant to recommendation 9(a) and (b) of the Fourth Meeting of the Conference of States Parties to the MESICIC.

In addition, it will review new developments in the States in connection with the Convention provisions selected for the Third Round, taking into account such aspects as the regulatory framework, technological developments, and results, and the relevant observations and recommendations will be made.

II. FRAMEWORK FOR REVIEW OF IMPLEMENTATION OF THE CONVENTION PROVISIONS SELECTED IN THE SIXTH ROUND

The review of implementation of the provision selected for the Sixth Round will be conducted within the framework of provisions in the *Convention*, the *Report of Buenos Aires*, and the *Rules*, and, where applicable, the *Methodology for Conducting on-Site Visits*.

3 . The *Methodology for Conducting on-Site Visits* (document SG/MESICIC/doc.276/11 rev. 2), is available at: http://www.oas.org/juridico/english/met_onsite.pdf

III. CRITERIA THAT WILL GUIDE THE REVIEW OF IMPLEMENTATION OF THE CONVENTION PROVISION SELECTED IN THE SIXTH ROUND

Pursuant to provisions in the *Report of Buenos Aires* and the *Rules* of the Committee, information concerning the implementation of the provision of the *Convention* selected for the Sixth Round shall be reviewed based mainly on the general and specific criteria described below.

A) GENERAL CRITERIA

The following three criteria shall guide the general and comprehensive review of the implementation of the provision of the *Convention* selected for the Sixth Round:

1. Equal treatment

In accordance with this criterion, and as concerns the review of information on the implementation of the selected provision of the *Convention*, all States Parties shall enjoy equal and consistent treatment. With a view to ensuring compliance with this criterion, in particular, the following precautions shall be taken pursuant to provisions in the *Report of Buenos Aires* and the *Rules*:

- a) All States Parties shall be reviewed within the framework of the round and in accordance with the same criteria and procedures;
- b) The questionnaire shall be the same for all States Parties^{4/}; and,
- c) All country reports shall have the same structure.^{5/}

2. Functional equivalency

The Committee will review the measures taken by a State Party to implement specific provision of the *Convention* to determine whether those measures seek to achieve the obligations and purposes of said *Convention*.

In this regard, the Committee shall review the information within the specific legal context and system of each State Party and the issue of whether the measures are uniform among the various States shall not be examined, but the Committee shall weigh the equivalency of the measures in achieving the expressed purposes.

3. Strengthening of cooperation

In accordance with this criterion, the Committee will review the information received always taking into account that the purpose of both the *Convention* and Follow-up *Mechanism* is to promote,

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4. Section II of the questionnaire for the Sixth Round, regarding follow-up of the recommendations formulated in the Third Round, is not applicable to those countries that were not party to the MESICIC when the Third Round was carried out, or were not reviewed in it. However, pursuant to Article 28 of the *Rules*, those countries must respond to the questionnaire adopted by the Committee for the Third Round, as envisaged in Section XII of the methodology for the Sixth Round set forth in this document.
 5. For those countries that were not party to the MESICIC when the Third Round was conducted, or were not reviewed in it, the Committee will adopt a separate format for their reports, which will include review of the provisions selected for that Round and exclude follow-up on the recommendations that, with respect to their implementation, the Committee formulated to the countries that were party to the *Mechanism* at that time, as envisaged in Section XII of the methodology for the Sixth Round set forth in this document.

facilitate and strengthen cooperation among States Parties in the prevention, detection, punishment and eradication of corruption.

B) SPECIFIC CRITERIA

The implementation by a State Party of the selected provision of the Convention will be reviewed based upon the following specific criteria:

1. Existence of a legal framework and/or other measures

The Committee will determine, based on this criterion, whether a State Party possesses a legal framework and other measures for the implementation of the selected provision of the Convention.

2. Adequacy of the legal framework and/or other measures

If the State Party possesses a legal framework and other measures for the implementation of the selected provision of the *Convention*, the Committee will review whether they are appropriate to promote the purposes of the *Convention*: to prevent, detect, punish and eradicate corruption.

3. Results of the legal framework and/or other measures

As concerns this criterion, the preliminary review will attempt to examine to what extent objective results have been generated by the application of the legal framework and of other measures existing in a State Party related to the implementation of the provision of the *Convention*.

The review of information on results shall seek to focus on the current situation of the country under review, avoiding inclusion of information referring to the period prior to the date of ratification of the *Convention* by the State Party.

When a State provides statistics in its response to the questionnaire, it shall attempt to ensure that the statistics cover the five years prior to its response.

4. Level of progress in the implementation of the *Convention*

Based on this criteria, the Committee will review the progress made and will identify the areas, if any, that require progress in the implementation of the *Convention*.

The Committee's recommendations will be specific and refer to areas in which a need for adjustments had been detected in order to achieve the purposes of the Convention. The Committee will avoid making abstract recommendations or recommendations to continue doing something, unless, as regards the latter, it is strictly necessary to do so in light of the nature of the subject matter under review or because certain specific actions have been initiated that the Committee considers it necessary to continue.

IV. CONSIDERATIONS WITH RESPECT TO THE SCOPE OF THE REVIEW OF THE PROVISION SELECTED FOR THE SIXTH ROUND

“Article XVI – Bank Secrecy:

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.”

With respect to the foregoing provision selected for the Sixth Round, first the Committee will establish how bank secrecy is conceived in the legal frameworks of the States Parties and review the bank secrecy provisions and/or substantive and procedural measures envisaged in the domestic laws of those States, as well as the bilateral and multilateral treaties to which they are party that have bank secrecy-related clauses, always bearing in mind the purpose underlying Article XVI.1 of the *Convention*.

Second, the Committee will review the measures adopted by the States Parties to ensure that bank secrecy is not invoked to deny the assistance sought by other States Parties, pursuant to Article XVI.1 of the *Convention*.

Third, the Committee will review the steps taken by the States Parties to ensure that, when acting as a Requesting State, they abide by the obligation 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, as envisaged in Article XVI.2 of the Convention.

Fourth, the Committee will identify the bodies, authorities, or entities in the States Parties that are competent to act both as a State Party requesting bank secrecy-related assistance and as a State Party from which such assistance has been requested. The Committee will also review how such assistance is processed and how care is taken to ensure compliance with the rules and/or measures in force.

Fifth, the Committee will review the objective results of the implementation by the States Parties of Article XVI of the *Convention*, using the information available in the country concerned, referring, wherever possible, to the past five years, and, where appropriate, the results indicators suggested in Section II.E of the questionnaire, in order to make it easier for the countries to present those results and easier for the Committee to understand and review them, and to proceed along the lines indicated in Recommendation 31 of the Fourth Meeting of the Conference of States Parties to the MESICIC.

Sixth, the Committee will take note of any difficulties and/or weaknesses regarding the implementation by States Parties of the provision of the Convention reviewed and, where applicable, of any specific technical cooperation needs identified by the States Parties.

V. FOLLOW-UP ON THE IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED IN THE THIRD ROUND AND NEW DEVELOPMENTS RELATED TO THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THAT ROUND⁶

6 . Section V of this methodology, concerning review of the recommendations formulated in the Third Round, does not apply to countries that were not party to the MESICIC when that round was conducted or were not reviewed

In accordance with the terms of Article 29 of the *Rules of Procedure*, and bearing in mind the agreement reached by the Committee at its Thirty-Third Meeting, in which in connection with the follow-up of recommendations, it endorsed the criteria contained in recommendation 9 (a) and (b) of the Fourth Meeting of the Conference of MESICIC States Parties, together with the agreement reached by the Committee at its Thirty-Second Meeting, the Sixth Round will review:

- a) Progress, information, and new developments^{7/} in relation to the implementation of the recommendations formulated to them and the measures suggested to them by the Committee for implementation in the reports from the Third Round; and
- b) New developments in relation to the Convention provisions selected for the Third Round, in such areas as legal frameworks, technological developments, and results.

In order to guide the countries in this undertaking, the Technical Secretariat will send each country an individualized form at least three months in advance of the date on which they are to return their responses to the questionnaire, which clearly identify the recommendations formulated to them and the measures suggested to them by the Committee for implementation in the reports from the Third Round, and including questions on new developments occurring in the countries in connection with the Convention provisions selected for the Third Round, in areas such as legal frameworks, technological developments, and results, so that the States can furnish the relevant information in connection therewith. This individualized form will be prepared by the Technical Secretariat based on the standard form attached to the questionnaire as Annex I thereto.

Accordingly, the Committee will first examine the progress, information, and new developments in the respective country in connection with the implementation of the recommendations and measures formulated during the Third Round, and it will proceed to take note of those that have been satisfactorily considered and those that require additional attention from the country under review. In addition, where appropriate, it will refer to the continued validity of those recommendations and measures and, as applicable, their restatement or reformulation pursuant to the decisions adopted by the Committee at its Thirty-Third Meeting, in accordance with recommendation 9(a) and (b) of the Fourth Meeting of the Conference of States Parties to the MESICIC.

Furthermore, in accordance with recommendation 11 of the Fourth Meeting of the Conference of States Parties to the MESICIC, the Committee will continue to review application and enforcement of the measures adopted, in addition to their implementation *de jure*.

The Committee will also take note of any difficulties in implementing the recommendations and measures formulated in the Third Round to which the State in question may have drawn attention, as well as of its technical cooperation needs to that end.

in it. With respect to those countries, the Committee will review their implementation of the provisions that were selected for review in the Third Round, using the methodology adopted by the Committee for that Round. Furthermore, in its review the Committee will also take into account the provisions of Section XII of the methodology for the Sixth Round contained in this document.

7 . For the purposes of following up on the recommendations formulated in the Third Round, as envisaged in Section V of the methodology, it is understood that new information and developments relate to new provisions and/or measures adopted in regard to the topic addressed by the recommendations and measures suggested by the Committee, or provisions and/or measures unknown to or not taken into consideration by the Committee when those recommendations or measures were formulated, that could have an impact on their validity or that could lead to their restatement or reformulation.

Additionally, the Committee will review the new developments occurring in the States in connection with the Convention provisions selected for the Third Round, taking into account such aspects as regulatory frameworks, technological developments, and results, and it will formulate the relevant observations and recommendations in connection therewith.

VI. BEST PRACTICES

Country reports shall describe up to four best practices related to the Convention provisions selected for the Third and Sixth Rounds that the corresponding country would voluntarily like to share with the other MESICIC member countries.

The above will help to consolidate the MESICIC as a best practices forum, as envisaged in the *Report of Buenos Aires*, which provides that one of its purposes is to facilitate the exchange of information, experience, and best practices, a goal that also coincides with recommendation 38 of the Fourth Meeting of the Conference of States Parties of the MESICIC.

VII. SOURCES OF INFORMATION AND ON-SITE VISITS

A) Sources of information:

The review will be carried out based on the answers to the questionnaire by the respective State Party, documents presented by civil society organizations in accordance with the *Rules* of the Committee, and any other pertinent information that the Secretariat and members of the Committee may obtain.

In their responses to the questionnaire, the States Parties may refer to information that they may have provided to other mechanisms, forums, or organizations regarding the matters under review.

Should a State adopt a law or have available any other relevant information subsequent to the date for submitting its response to the questionnaire, it may send that law or information to the Secretariat for consideration in the report up to one month before the meeting of the corresponding review subgroup, so that the Secretariat may relay it to the members of the review subgroup. Any other relevant information received after that deadline shall be placed as a footnote in the report in question.

B) On site visits:

The Technical Secretariat, on the same day it is to send the questionnaire adopted for the Sixth Round to each State in compliance with Section V of this methodology, will request that the State receiving the questionnaire officially notify if it grants its consent to an on-site visit. The deadline for responding to this request shall be the same as that for submitting the response to the questionnaire, as set out in the schedule adopted for the Sixth Round.

If a country under review has consented to an on-site visit, information gathered during such a visit shall be included in the corresponding sections of the country report. To that end, the members of the corresponding review subgroup shall provide the Technical Secretariat, within two weeks of the end of the visit, with their observations and any recommendations to be taken into account in the preliminary draft report prepared by the Technical Secretariat.

On-site visits shall be conducted in person, as in the past. In order to secure the necessary resources necessary to carry out an on-site visit, the following procedure shall be observed:

- a) The country under review will remain responsible for providing the premises for holding the meetings of the on-site visit and for providing the transportation services required by the representatives of the review subgroup and the officials of the Technical Secretariat in its territory.
- b) The member countries of the review subgroup shall be responsible for the travel expenses of their representatives to the territory of the country under review and for their per diem during their stay therein.
- c) The MESICIC Technical Secretariat shall be responsible for the travel expenses of its officials to the territory of the country under review and for their per diem during their stay therein, which are to be covered with funds from the voluntary contributions received from the countries and bearing in mind the availability of those resources.

On an exceptional basis, if it is not possible to secure the resources needed to conduct the on-site visit in person as indicated above, or if the visit is prevented by unforeseeable circumstances or force majeure, it shall be conducted remotely, using videoconference or teleconference systems. To that end, the Technical Secretariat will send the country under review a document setting out the technical requirement to be met for such a virtual visit. For virtual on-site visits, the *Methodology for Conducting on-Site Visits* adopted by the Committee shall apply, except as regards aspects related to the travel and physical presence in the country under review of the members of the review subgroup and Technical Secretariat personnel.

The agenda of the in-person or virtual meetings conducted in the course of the in-person or virtual on-site visit, and the names of the institutions or organizations that took part in them, shall be attached to the report on the country visited, pursuant to provision 34 of the *Methodology for Conducting on-Site Visits*.

If, as a result of an in-person or virtual on-site visit, it becomes necessary for the country under review to present further information, that country under review should remit it to the Secretariat within two weeks from the conclusion of the on-site visit.

VIII. THE REVIEW PROCESS

The review shall follow the process outlined in the *Rules* of the Committee, in keeping with the *Report of Buenos Aires*.

IX. RESPONSES TO THE QUESTIONNAIRE

The States shall respond to the questionnaire in accordance with the provisions of Article 21 of the *Rules* and within the deadlines set by the Committee in the timetable adopted for the Sixth Round.

For the purposes of the provisions of Article 26 of the *Rules*, States Parties are recommended to append to their response any additional documents they consider to be necessary, preferably in electronic format, which they shall submit for the attention of the members of the Committee in the original language. To that end, States Parties may also attach translations of those appendices in the other working languages of the Committee.

Once it has received the responses to the questionnaire from the States Parties, the Technical Secretariat shall publish them on the *Anti-Corruption Portal of the Americas*.

X. COUNTRY REPORT

In accordance with Article 25(g) of the *Rules*, once the country report is approved by the Committee, the Technical Secretariat shall publish it on the *Anti-Corruption Portal of the Americas*. In keeping with recommendation 10 of the Third Meeting of the Conference of States Parties to the MESICIC, the Committee will adopt a summary of the report, covering the recommendations formulated in respect of the Convention provision selected for review in the Sixth Round as well as progress made in the implementation of the recommendations formulated in the Third Round. That summary shall also be posted on the aforementioned Portal.

XI. PARTICIPATION BY CIVIL SOCIETY ORGANIZATIONS AND/OR, INTER ALIA, PRIVATE SECTOR ORGANIZATIONS, PROFESSIONAL ASSOCIATIONS, ACADEMICS, OR RESEARCHERS

In accordance with Article 34(b) of the *Rules*, civil society organizations may present, through the Technical Secretariat, documents with specific and direct information related to the questions that are referred to in the questionnaire with respect to the implementation by a State Party of the provision of the Convention selected for the Sixth Round.⁸ They may also present documents with information relating to implementation of the recommendations formulated by the Committee to the State Party in the Third Round.

In keeping with the second paragraph of Article 36 of the *Rules*, the Committee will invite civil society organizations to give verbal presentations, in informal meetings, of any documents they presented in accordance with the provisions in the preceding paragraph and in Article 34(b) of the *Rules*.

Documents submitted by civil society organizations in accordance with this section shall be published on the Anti-Corruption Portal of the Americas.

For the purposes of this section, civil society organizations shall submit documents, together with their corresponding electronic copies, within the same time limit established for the respective States Parties to present their responses to the questionnaire.

In addition to the foregoing, in the event that the country under review has granted its consent to an on-site visit, chapter IV of the *Methodology for Conducting On-Site Visits*, which contains the provisions for holding meetings with civil society organizations and/or, inter alia, private sector organizations, professional associations, academics, or researchers, shall apply.

XII. APPLICATION OF THIS METHODOLOGY TO STATES THAT WERE NOT PARTY TO THE MESICIC IN THE THIRD ROUND OR WERE NOT REVIEWED IN IT

The methodology adopted by the Committee for the Third Round of Review shall apply to States that were not party to the *Mechanism* when that Round was conducted, or were not reviewed in it, in respect of review of the provisions of the *Convention* selected for that round.

8. States that were not party to the MESICIC when the Third Round was conducted, or were not reviewed in it, may also submit this information in connection with the questions contained in the questionnaire for the Third Round that such States have to answer, according to Article 28 of the *Rules*.

The foregoing notwithstanding, the review will also take note, with regard to the provisions selected for the Third Round, of any difficulties in their implementation and of the technical cooperation needs of those States. To that end, the Technical Secretariat will include the questions concerning these aspects in the questionnaire for the Third Round of Review, which shall also be answered by the States in accordance with Article 28 of the *Rules* and which the Technical Secretariat shall send to them at least three months before the deadline for responding to the questionnaire, according to the schedule adopted for the Sixth Round.

The Technical Secretariat will also include, in the questionnaire referred to in the previous paragraph, an optional question for the country under review asking whether it would like to describe a maximum of four best practices related to the Convention provisions selected for the Third and Sixth Rounds that it would voluntarily like to share with the other MESICIC member countries.

In the event that the country under review has granted its consent for an on-site visit, that visit will also cover the *Convention* provisions selected for the Third Round, and accordingly, the information gathered during that visit will be included in the sections of the report on the country concerned that pertain to those provisions. In addition, the agenda of meetings held within the framework of the on-site visit and the names of the institutions or organizations that participated during each will be included as an annex to the report, in accordance with provision 34 of the *Methodology for Conducting On-Site Visits*.

All of the foregoing will be reflected in the respective country reports, according to the format for the country reports that will be prepared in the framework of the Sixth Round for States that were not party to the MESICIC in the Third Round, or were not reviewed in it, in relation to which the Committee will also adopt a summary covering the recommendations formulated with respect to the Convention provisions selected for review in the Third Round and the Convention provision selected for review in the Sixth Round, which will be published on the Anti-Corruption Portal of the Americas together with the relevant report.

With respect to the review of the Convention provision selected for the Sixth Round, the methodology adopted in this document by the Committee for this Round shall be fully applied to the aforementioned States. The provisions of Section XI of this methodology shall also be applied to them in respect of review of implementation of the provisions of the *Convention* selected for the Third Round.