

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
Fourteenth Meeting of the Committee of Experts
December 8 to 12, 2008
Washington, DC.

OEA/Ser.L
SG/MESICIC/doc.229/08 rev. 2
12 December 2008
Original: Spanish

**QUESTIONNAIRE
ON THE PROVISIONS OF THE INTER-AMERICAN CONVENTION AGAINST
CORRUPTION SELECTED IN THE THIRD ROUND AND FOR FOLLOW-UP ON THE
RECOMMENDATIONS FORMULATED IN THE PREVIOUS ROUNDS**

INTRODUCTION

The Report of Buenos Aires and the Rules of Procedure and Other Provisions 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, Committee, Mechanism, and Convention*) provide that the Committee shall adopt a questionnaire on the selected provisions to be reviewed in each round.

At its thirteenth meeting, held from June 23 to 27, 2008, the Committee decided that during the third round it would review implementation by States Parties of the following provisions of the Convention: Article III, paragraphs 7 and 10; and Articles VIII, IX, X, and XIII.

Furthermore, the first paragraph of Article 29 of the Rules provides that “At the start of a new round, there shall be included within the questionnaire a section on “Follow-up on Recommendations” to enable the review of progress made in implementing the recommendations included in its country report adopted in previous rounds,’ and that ‘to that end, each State Party shall submit the appropriate information in the standard format that the Committee shall provide as an Annex to the Questionnaire.’ The aforesaid Article also provides in its second paragraph 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.”

In light of the above, this document contains the questions that comprise the questionnaire adopted by the Committee.

The responses given to the questionnaire shall be reviewed in accordance with the methodology adopted by the Committee, which is annexed to this document and may also be consulted on the OAS Webpage at: http://www.oas.org/juridico/english/mesicic_method_IIIround.pdf

In accordance with Article 21 of the Rules, the State Party shall forward the response to the questionnaire through its Permanent Mission to the OAS, in an electronic format, along with the corresponding supporting documents, within the time period established by the Committee.

To this effect, the OAS General Secretariat's e-mail, to which the response to the questionnaire should be sent and to which queries may be addressed in order to clarify any doubts that arise, is the following: LegalCooperation@oas.org.

In completing this questionnaire, States Parties should keep in mind the deadlines set by the Committee in the schedule for the Third Round as well as the recommendation contained therein that responses to the questionnaire not exceed 35 pages.

SECTION I

QUESTIONS ON IMPLEMENTATION OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE THIRD ROUND

CHAPTER ONE

DENIAL OR PREVENTION OF FAVORABLE TAX TREATMENT FOR EXPENDITURES MADE IN VIOLATION OF THE ANTICORRUPTION LAWS (ARTICLE III (7) OF THE CONVENTION)

- a) Describe the laws, rules and/or measures that expressly deny or prevent favorable tax treatment for any individual or corporation for expenditures made in violation of the anticorruption laws of your country. Please attach a copy of the relevant provisions and documents.
- b) Describe the means or mechanisms to enforce the respective laws, rules and/or measures taken to prevent, investigate and/or sanction those who obtain favorable tax treatment for expenditures made in violation of the anticorruption laws of your country.
- c) Briefly mention the objective results that have been obtained in applying the respective laws, rules and/or measures, providing any relevant statistical data available in your country, if possible for the last two years.

CHAPTER TWO

PREVENTION OF BRIBERY OF DOMESTIC AND FOREIGN GOVERNMENT OFFICIALS (ARTICLE III (10) OF THE CONVENTION)

- a) Are there laws and/or other measures in your country to deter or impede bribery of domestic and foreign government officials, such as mechanisms to ensure that publicly held companies and other types of associations maintain books and records which, in reasonable detail, accurately reflect the acquisition and disposition of assets, and have sufficient internal accounting controls to enable their officers to detect corrupt acts? If so, please specify what they are, briefly describe them, and list and attach a copy of the related provisions and documents, referring in particular to the following aspects:
 - i. Publicly held companies and other types of associations required to maintain accounting records of their operations in accordance with the accounting standards in force in your country.

- ii. Rules regarding how these accounting records are to be maintained, indicating what length of time they must be kept; if they must be kept in books of account or any other medium that affords suitable protection for their contents; if said records are required to state all cash or in-kind expenditure, payments, or contributions, as well as specify their reason or purpose, and precisely identify their recipients; and if they must be substantiated with supporting documents containing the necessary information to confirm their veracity.
 - iii. Mechanisms to enforce the respective laws and/or other measures, such as the prohibitions against the establishment of accounts or operations without recording them on the books; registration of fictional expenditures or misstatement of the purpose thereof; adulteration of accounting records; use of false documents to support accounting records, and destruction of accounting documents before their prescribed custody period expires; as well as criminal, financial, or other penalties for those who infringe these prohibitions, and organs and agencies responsible for prevention and/or investigation of their violation and for imposing the appropriate punishment.
- b) In relation to question a), briefly mention the objective results that have been obtained in enforcing the respective laws and/or other measures to which it refers, such as steps taken to prevent or investigate their infringement and penalties imposed in that regard, providing any relevant statistical data available in your country, if possible for the last two years.
 - c) If there are no laws and/or other measures such as those mentioned in question a), briefly indicate how your State has considered the applicability within your own institutional system of the provisions contained in Article III (10) of the Convention.

CHAPTER THREE

TRANSNATIONAL BRIBERY (ARTICLE VIII OF THE CONVENTION)

1. Criminalization of transnational bribery

- a) Does your State prohibit and punish, subject to its Constitution and the fundamental principles of its legal system, the offering or granting, directly or indirectly, by its nationals, persons having their habitual residence in its territory, and businesses domiciled there, to a government official of another State, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage, in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official's public functions? If so, please indicate if in your country it is considered an act of corruption for the purposes of the Convention, and describe briefly the laws and/or other measures regarding them, indicating what penalties they provide, and attach a copy of them.
- b) If your State has criminalized transnational bribery, briefly mention the objective results that have been obtained in that regard, such as judicial proceedings undertaken and their outcome. The above information should refer, as far as possible, to the last five years.
- c) If your State has not criminalized transnational bribery, briefly mention if your country has taken any steps to do so.

2. Assistance and cooperation in the case of States Parties that have not criminalized transnational bribery

- a) If your State has not criminalized transnational bribery, does it, insofar as its laws permit, provide assistance and cooperation with respect to this offense as provided in the Convention.
- b) If so, briefly mention the objective results that have been obtained in that regard. The above information should refer, as far as possible, to the last five years.

CHAPTER FOUR

ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)

1. Criminalization of illicit enrichment

- a) Has your State established as an offense, subject to its Constitution and the fundamental principles of its legal system, a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions? If so, please indicate if in your country it is considered an act of corruption for the purposes of the Convention, and describe briefly the laws and/or other measures regarding them, indicating what sanctions they provide, and attach a copy of them.
- b) If your State has criminalized illicit enrichment, briefly mention the objective results that have been obtained in that regard, such as judicial proceedings undertaken and their outcome. The above information should refer, as far as possible, to the last five years.
- c) If your State has not criminalized illicit enrichment, briefly mention if your country has taken any steps to do so.

2. Assistance and cooperation in the case of States Parties that have not criminalized illicit enrichment

- a) If your State has not criminalized illicit enrichment, does it, insofar as its laws permit, provide assistance and cooperation with respect to this offense as provided in the Convention.
- b) If so, briefly mention the objective results that have been obtained in that regard. The above information should refer, as far as possible, to the last five years.

CHAPTER FIVE

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

If, subsequent to its ratification of the Convention, your State has criminalized transnational bribery and/or illicit enrichment, as provided at Articles VIII (1) and IX (1) of said Convention, please indicate if it has notified the Secretary General of the OAS.

CHAPTER SIX

EXTRADITION (ARTICLE XIII OF THE CONVENTION)

- a) Bearing in mind the provisions contained in Article XIII (1, 2, 3, and 4) of the Convention, under your country's legal framework, may this Convention be considered the legal basis for extradition in connection with the offenses it has criminalized in accordance therewith? If so, briefly describe any existing laws and/or other measures that allow as much, and attach a copy thereof.
- b) If your State may refuse extradition for the above offenses solely on the basis of the nationality of the person sought, or because it deems that it has jurisdiction over the offense, please indicate, when this occurs, if it submits the case to the competent authorities for the purpose of prosecution and reports the final outcome to the requesting State in due course. If so, briefly describe the existing laws and/or other measures in that regard and attach a copy thereof.
- c) Please indicate if, subject to the provisions of its domestic law and its extradition treaties, your State, upon being satisfied that the circumstances so warrant and are urgent, and at the request of another State Party to the Convention, takes into custody the person whose extradition is sought and who is present in its territory, or takes other appropriate measures to ensure their presence at extradition proceedings. If so, briefly describe the existing laws and/or other measures in that regard and attach a copy thereof.
- d) Briefly state the objective results that have been obtained in enforcing the existing rules and/or other measures on extradition for the aforementioned offenses, such as extradition requests made to other States Parties for the purpose of investigating or prosecuting those offenses and procedures initiated by your State to attend to requests received by it from other States Parties with the same purpose, as well as the results thereof. The above information should refer, as far as possible, to the last five years.

SECTION II

FOLLOW-UP ON THE RECOMMENDATIONS FORMULATED IN THE NATIONAL REPORTS IN PREVIOUS REVIEW ROUNDS

1. First Round

In accordance with Article 29 of the *Rules*, please provide information, in the standard format attached to this questionnaire (Annex I), on progress on each of the recommendations made to your State in the First Round, on which your country did not supply information with regard to progress in their implementation in its response to Section II of the Questionnaire for the Second Round, or on those that it supplied information but which the Committee considered in Section IV of your country's report for that round that they needed additional attention.

2. Second Round

In accordance with Article 29 of the *Rules*, please provide information, in the standard format attached to this questionnaire (Annex II), on progress in implementation of the recommendations formulated in the report adopted by the Committee with respect to your country in the framework of the Second Review Round.

SECTION III

INFORMATION ON THE OFFICIAL RESPONSIBLE FOR COMPLETION OF THIS QUESTIONNAIRE

Please provide the following information:

(a) State Party: _____

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

() Mr.: _____

() Ms.: _____

Title/position: _____

Agency/office: _____

Address: _____

Telephone number: _____

Fax number: _____

E-mail address: _____

ANNEX I

STANDARD FORMAT FOR PRESENTATION OF INFORMATION ON PROGRESS IN IMPLEMENTATION OF RECOMMENDATIONS FORMULATED IN THE NATIONAL REPORT IN THE FIRST REVIEW ROUND

Instructions: Following the same structure as the country report,^{1/} kindly supply the following information on each of the recommendations made to your State in the First Round, on which your country did not supply information with regard to progress in their implementation in its response to Section II of the Questionnaire for the Second Round, or on those that it supplied information but which the Committee considered in Section IV of your State's country report for that round that they needed further attention:

I. RECOMMENDATION: (Please transcribe the text of the recommendation made to your State by the Committee in the country report, on which this report contains information as regards progress.)

A) Please mention the measure or measures suggested by the Committee, or the alternative measure or measures, that have been adopted to implement the above recommendation; and briefly describe the concrete steps that have been taken in connection with the measures adopted. As appropriate, please indicate the Internet web site where information may be obtained in greater detail on the measures adopted and steps taken to implement the foregoing recommendation, precisely identifying the relevant information at that site:

B) Briefly mention any difficulties observed in the process of implementing the above recommendation. As appropriate, please also mention the Internet web site where information may be obtained in greater detail in that regard, precisely identifying the relevant information at that site:

C) Where appropriate, please mention which domestic agencies have participated in implementing the recommendations and identify concrete technical assistance and other needs that you may have in connection with the implementation of the above recommendation. Furthermore, as appropriate, also mention the Internet web site that describes in greater detail the aspects mentioned herein, precisely identifying the relevant information at that site:

1. By way of a guide, below, this standard format sets out that structure in connection with the issues covered in the First Review Round.

II. RECOMMENDATION: (Please transcribe the text of the recommendation made to your State by the Committee in the country report, on which this report contains information as regards progress.)

NOTE: Please repeat the process for paragraphs A), B), and C) above for each of the other recommendations covered in the progress report.

STRUCTURE OF COUNTRY REPORTS IN THE FIRST ROUND

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)
 - 1.1. Standards of conduct intended to prevent conflicts of interest and enforcement mechanisms
 - 1.2. Standards of conduct to ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions and enforcement mechanisms
 - 1.3. Standards of conduct and mechanisms concerning measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware
2. SYSTEMS FOR REGISTERING INCOME, ASSETS, AND LIABILITIES (ARTICLE III, PARAGRAPH 4, OF THE CONVENTION)
3. OVERSIGHT BODIES FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 AND 11, OF THE CONVENTION)
4. MECHANISMS TO ENCOURAGE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11 OF THE CONVENTION)
 - 4.1. General participation mechanisms
 - 4.2. Mechanisms for access to information
 - 4.3. Mechanisms for consultation
 - 4.4. Mechanisms to encourage participation in public administration
 - 4.5. Mechanisms for participation in the follow up of public administration
5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)
6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)
7. GENERAL RECOMMENDATIONS

ANNEX II

STANDARD FORMAT FOR PRESENTATION OF INFORMATION ON PROGRESS IN IMPLEMENTATION OF RECOMMENDATIONS FORMULATED IN THE NATIONAL REPORT IN THE SECOND REVIEW ROUND

Instructions: Following the same structure as the country report,^{2/} kindly supply the following information on each of the recommendations mentioned in this progress report which were formulated to your State in the Second Round:

- I. **RECOMMENDATION:** (Please transcribe the text of the recommendation made to your State by the Committee in the country report, on which this report contains information as regards progress.)

- A) Please mention the measure or measures suggested by the Committee, or the alternative measure or measures, that have been adopted to implement the above recommendation; and briefly describe the concrete steps that have been taken in connection with the measures adopted. As appropriate, please indicate the Internet web site where information may be obtained in greater detail on the measures adopted and steps taken to implement the foregoing recommendation, precisely identifying the relevant information at that site:

- B) Briefly mention any difficulties observed in the process of implementing the above recommendation. As appropriate, please also mention the Internet web site where information may be obtained in greater detail in that regard, precisely identifying the relevant information at that site:

- C) Where appropriate, please mention which domestic agencies have participated in implementing the recommendations and identify concrete technical assistance and other needs that you may have in connection with the implementation of the above recommendation. Furthermore, as appropriate, also mention the Internet web site that describes in greater detail the aspects mentioned herein, precisely identifying the relevant information at that site:

2. By way of a guide, below, this standard format sets out that structure in connection with the issues covered in the Second Review Round.

II. RECOMMENDATION: (Please transcribe the text of the recommendation made to your State by the Committee in the country report, on which this report contains information as regards progress.)

NOTE: Please repeat the process for paragraphs A), B), and C) above for each of the other recommendations covered in the progress report.

STRUCTURE OF COUNTRY REPORTS IN THE SECOND ROUND

1. SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES (ARTICLE III (5) OF THE CONVENTION)
 - 1.1. Government hiring systems
 - 1.2. Government systems for procurement of goods and services
2. SYSTEMS FOR PROTECTING PUBLIC SERVANTS AND PRIVATE CITIZENS WHO, IN GOOD FAITH, REPORT ACTS OF CORRUPTION (ARTICLE III (8) OF THE CONVENTION)
3. ACTS OF CORRUPTION (ARTICLE VI OF THE CONVENTION)
4. GENERAL RECOMMENDATIONS