

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

**METHODOLOGY FOR THE REVIEW OF THE IMPLEMENTATION OF THE PROVISIONS
OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION SELECTED WITHIN
THE FRAMEWORK OF THE FIRST ROUND 1[1]**

May 24, 2002

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 “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 first meeting, held in Washington D.C. from January 14 to 18, 2002, the *Committee* decided that during the first round it would review implementation by States Parties of the following provisions of the *Convention*: Article III, paragraphs 1, 2, 4, 9 and 11; Article XIV; and Article XVIII.

In light of the above, this document contains the proposed methodology for the review of the implementation of these provisions by States Parties. To this end, the document refers to the objective of the review in the first round, to its framework, the general and specific criteria used to guide the review, the possibility of follow-up visits, considerations with respect to the scope of the review of each one of the provisions selected, source of information, the review process, and the recommendations and their follow-up.

I. OBJECTIVE OF THE REVIEW WITHIN THE FRAMEWORK OF THE FIRST ROUND

Within the framework of the purposes of the *Convention* and the *Mechanism*, the objective of the review in the first round will be to conduct the follow-up of the implementation in each State Party of the selected provisions, by the review of the existence of a legal framework and

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

of other measures for the implementation of each one of the provisions and, in the case it exists, a review of State Party's results and progress.

II. FRAMEWORK FOR REVIEW

The review of the implementation of the provisions selected in the first round shall be conducted within the framework of the provisions of the Convention as well as of the Report of Buenos Aires and the Rules of the Committee.

III. CRITERIA USED TO GUIDE THE REVIEW

In addition to the principles outlined in the Report of Buenos Aires and the Rules of the Committee, information concerning the implementation of the selected provisions of the Convention by States Parties 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 by the States Parties of the selected provisions of the Convention:

1. **Equal treatment**

In accordance with this criterion, and as concerns the review of information on the implementation of the selected provisions 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 precautionary measures shall be adopted in addition to the principles outlined 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; and
- c) All country reports shall have the same structure.

2. **Functional equivalency**

The Committee shall review the measures taken by the State Party to implement specific provisions of the Convention to determine whether those measures seek to achieve the obligations and purposes of the 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 appreciate the equivalency of the measures in achieving the expressed purposes.

3. **Strengthening of cooperation**

In accordance with this criterion, the Committee shall review the information received always taking into account that the purpose of both the Convention and Follow-up Mechanism is to promote, 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 each of the selected provisions shall be reviewed based upon the following specific criteria:

1. Level of Progress in the implementation of the Convention

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

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

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

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

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

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

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

IV. POSSIBILITY OF FOLLOW-UP VISITS

Within the framework of the first round, implementation of the selected provisions of the Convention will be reviewed with respect to this methodology.

Upon the conclusion of this round and to follow-up on the reviewed provisions and recommendations, the Committee may undertake on-site visits by the preliminary review subgroup to all the States Parties, in the following rounds, in accordance with the provision in Article 32 of the Rules. In this case, within the methodology that is adopted in the corresponding round, the Committee shall determine the reference terms and conditions in undertaking said on-site follow-up visits.

V. CONSIDERATIONS WITH RESPECT TO THE SCOPE OF THE REVIEW OF THE PROVISIONS SELECTED WITHIN THE FRAMEWORK OF THE FIRST ROUND

For the review of the selected provisions selected of the Convention to be considered in the first round, the following three thematic areas will be kept in mind, as well as the considerations that are formulated in relation with some of the selected provisions.

A. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE

The first thematic area is divided into two provisions selected by the Committee for review of implementation by States Parties establish the following:

“Article III - Preventive Measures - For the purposes set forth in Article II of this Convention, the States Parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen:

1. Standards of conduct for the correct, honorable, and proper fulfillment of public functions. These standards shall be intended to prevent conflicts of interest and ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions. These standards shall also establish measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions. Such measures should help preserve the public's confidence in the integrity of public servants and government processes.

2. Mechanisms to enforce these standards of conduct”.

Given the close relationship between these two measures, they shall be reviewed jointly. In this regard, it should be pointed out that, in accordance with paragraph 1 of the above-mentioned Article III of the Convention, these standards of conduct:

- a) “Shall be intended to prevent conflicts of interest”;
- b) As well, shall be intended to “ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions”; and,
- c) “Shall also establish measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions”.

Similarly, it is important to emphasize that, in accordance with paragraph 2 of the same Article III, the mechanisms shall be designed to “enforce these standards of conduct”.

Bearing this in mind, the review of the implementation by States Parties of the measures referred to in paragraphs 1 and 2 of Article III of the Convention shall be divided in accordance with the three topics mentioned above.

For each of these thematic areas, consideration shall be given to both the legal framework (paragraph 1 of Article III of the Convention) and the mechanisms (paragraph 2), and the oversight bodies with respect to the selected provisions.

For the review of the standards of conduct intended to prevent conflicts of interests and of the mechanisms to enforce its compliance of these standards, it shall be taken into account whether these standards refer to the various occasions when such conflicts may arise or be observed, which are, prior to taking up the performance of public functions, during such performance and, subsequently, upon cessation of the performance of such functions.

B. SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES

The second thematic area shall be concerned with the review of the third provision selected by the Committee, which establishes the following:

“Article III - Preventive Measures - For the purposes set forth in Article II of this Convention, the States Parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen:

(...)

“4. Systems for registering the income, assets and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such disclosures public”.

For the review of the implementation of this measure, consideration shall be given to the legal framework and, if they exist, the oversight bodies related to that framework.

C. OVERSIGHT BODIES

In third thematic area the review of the implementation of Article III (9) of the Convention shall only address that which has to do with the other provisions of the Convention that were selected within the framework of this first round (Article III (1), (2), (4) and (11)).

D. CIVIL SOCIETY PARTICIPATION

The fourth thematic area shall refer to the review of the implementation of the fifth provision chosen by the Committee, which establishes the following:

“Article III.- Preventive Measures.- For the purposes set forth in Article II of this Convention, the States Parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen:

(...)

“11. Mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption”.

For the purposes of the review of the implementation of this provision, in addition to its consideration in general, the following mechanisms may be taken into account:

- a) Mechanisms to ensure access to information.-** In this regard, mechanisms that regulate and facilitate the access of civil society and non-governmental organizations to information under the control of public institutions shall be reviewed, taking into account that the possibility of obtaining this information is a prerequisite for these organizations to participate in efforts to prevent corruption.
- b) Consultative mechanisms-** In this regard, mechanisms that enable those who perform public functions to request and receive feedback from civil society and non-governmental organizations shall be reviewed, taking into account the valuable contribution made by these consultative mechanisms in efforts to prevent corruption.
- c) Mechanisms to encourage active participation in public administration.-** In this regard, mechanisms that permit the active participation of civil society and non-governmental organizations in public policy and decision-making processes shall be reviewed, as part of the efforts to prevent corruption.
- d) Participation mechanisms in the follow-up of public administration .-** In this regard, mechanisms that permit the participation of civil society and non-governmental organizations in the follow-up of public administration shall be reviewed, in order to meet the purposes of preventing, detecting, punishing, and eradicating acts of public corruption.

E. ASSISTANCE AND COOPERATION

The fifth thematic area shall refer to the review of the implementation of Article XIV of the Convention in relation to mutual assistance and technical cooperation.

F. CENTRAL AUTHORITIES

The sixth thematic area shall refer to the review of the implementation of Article XVIII concerning central authorities and the objectives of international cooperation and assistance provided for in the Convention.

VI. SOURCES OF INFORMATION

The review of the implementation of the selected provisions shall 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.

VII. REVIEW PROCESS

As regards the review of the implementation by States Parties of the selected provisions of the Convention, the Committee shall follow the process outlined in its Rules, in development of the Report of Buenos Aires.

VIII. COUNTRY REPORT

Comments made by the Committee in the country report shall:

- a) Refer to each of the thematic areas into which the report is divided in accordance with the provisions whose implementation is being reviewed.
- b) Identify areas in which the State Party has made progress in its effort to implement the Convention and, if there are any, areas in which additional progress is deemed necessary, and make recommendations to the State Party to take necessary further action.
- c) Refer to those areas in that the State Party may request or receive technical cooperation or assistance, as well as to the known resources or programs in this field that can be useful for the State Party.
- d) Be sufficiently detailed and specific to enable follow-up of the progress on these recommendations in accordance with the provisions of the Report of Buenos Aires, the Rules of the Committee and this methodology.

IX. DOCUMENTS

The responses of the States Parties to the questionnaire and the draft country reports shall be translated into the languages of the Committee.

In compliance with the provision in Article 27 of the Rules, it is recommended that the responses of the States Parties to the questionnaire not exceed twenty-five (25) pages, allowing each State Party to annex the necessary documents it considers appropriate which shall be distributed in their original language. The State Party may also attach the translations of said annexes into the other languages of the Committee for distribution.

Likewise, it is recommended that the country reports not exceed twenty-five (25) pages.

