

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 SECOND ROUND AND FOR
THE ANALYSIS OF THE CONVENTION PROVISIONS SELECTED FOR THE FIFTH
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 Twenty-Fourth Meeting, held on September 8 to 12, 2014, the Committee chose, as topics for review during the Fifth Round, those relating to Article III, paragraphs 3 and 12 of the Convention, which refer, respectively, to "instruction[s] to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities" and to "the study of further preventive measures that take into account the relationship between equitable compensation and probity in public service." In addition, with regard to the follow-up of recommendations, the Committee took the same view as that expressed at the Third Meeting of the Conference of the MESICIC States Parties and agreed that, in the Fifth Round, the Committee would follow-up of the recommendations formulated in the Second Round and which were deemed to require additional attention in the reports of 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 Second 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 analyze new developments in the States in connection with the Convention provisions selected for the Second 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

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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

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 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 provisions of the *Convention* selected in the framework of the Fifth Round and for follow-up on the recommendations formulated by the Committee in the country reports adopted in the Second Round. To this end, the document refers to the objective of the review in the Fifth Round, to its framework, and the general and specific criteria used to guide the review of the provisions selected in the Fifth Round; considerations with respect to the scope of this review and follow-up on the recommendations formulated in the country reports in the Second 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 Second Round was carried out.

I. OBJECTIVE OF THE REVIEW IN THE FIFTH ROUND

Within the framework of the purposes of the *Convention* and the *Mechanism*, the objective of the review in the Fifth Round will be to follow up on the implementation in each State Party of the *Convention* provisions selected in the Fifth Round, by reviewing the existence of a legal framework and of other measures for the implementation of those provisions 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 Second Round for which the Committee deemed that additional attention was required in the reports from the Third Round, in accordance with Article 29 of the *Rules*, and taking into account the decisions adopted by the Committee at its Twenty-fourth meeting, pursuant to recommendation 9(a) of the Third Meeting of the Conference of States Parties to the MESICIC.

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

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

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

The review of implementation of the provisions selected in the Fifth 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*.

III. CRITERIA THAT WILL GUIDE THE REVIEW OF IMPLEMENTATION OF THE CONVENTION PROVISIONS SELECTED IN THE FIFTH ROUND

Pursuant to provisions in the *Report of Buenos Aires* and the *Rules* of the Committee, information concerning the implementation of the provisions of the *Convention* selected in the Fifth 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 provisions of the *Convention* selected in the Fifth Round:

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 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 provisions 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

4 . Section II of the questionnaire, regarding follow-up of the recommendations formulated in the Second Round, is not applicable to those countries that were not party to the MESICIC when the Second Round was carried out. However, pursuant to Article 28 of the *Rules*, those countries must reply to the questionnaire adopted by the Committee for the Second Round, as envisaged in Section XII of the methodology for the Fifth Round set forth in this document.

5 . For those countries that were not party to the MESICIC when the Second Round was conducted, 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 Fifth Round set forth in this document.

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, 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 provisions 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 respective provisions 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 respective 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 respective 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 reply to the questionnaire, it shall attempt to ensure that the statistics cover the five years prior to its reply.

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

Based on this criterion, 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.

In addition to the foregoing, in its review the Committee may, where appropriate, take into consideration any elements contained in the provisions of the United Nations Convention against Corruption that refer to the subject matter of the provisions of the Inter-American Convention against Corruption, whose implementation is under review, in keeping with the recommendation 42 of the Third Meeting of the Conference of States Parties to the MESICIC.

IV. CONSIDERATIONS WITH RESPECT TO THE SCOPE OF THE REVIEW OF THE PROVISIONS SELECTED IN THE FIFTH ROUND

A) INSTRUCTIONS TO GOVERNMENT PERSONNEL TO ENSURE PROPER UNDERSTANDING OF THEIR RESPONSIBILITIES AND THE ETHICAL RULES GOVERNING THEIR ACTIVITIES (ARTICLE III, PARAGRAPH 3 OF THE CONVENTION)

With respect to the aforementioned provision, the Committee will review whether the State Parties have considered measures to "create, maintain and strengthen" instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, as provided in Article III.3 of the *Convention*.

To that end, bearing in mind, first, that there are numerous government entities in the States Parties to the MESICIC, each country will select up to three personnel groups from its branches of government or public agencies at the national/federal level that, because of their majority position or because of the importance of their functions, are deemed to be prominent and deserving of review for the purpose set out in Article III, paragraph 3, of the Convention, which deals with giving instructions to government personnel for the proper understanding of their responsibilities and the ethical rules governing their activities.

Second, the Committee will establish whether, in relation to said group(s) of personnel, provisions and/or measures have been adopted to ensure that they have a proper understanding of their responsibilities and of the ethical rules governing their activities. It will also, to the extent possible, review such aspects as those referred to more specifically in Section II, Chapter I.D of the questionnaire relating, inter alia, to how and when such instructions are imparted, the programs envisaged to that end, and the bodies responsible for executing them.

Third, the review will examine the objective results of applying the provisions and/or measures designed to ensure proper understanding of responsibilities and of the ethical rules governing the activities of the personnel making up the aforementioned group(s), based on the information each country has, if possible covering the past five years, and, if possible, on the indicators of results included in Section II, Chapter 1.E and F of the questionnaire, in order to facilitate the presentation of that information by the countries and its comprehension and review by the Committee, as well as to move forward in the manner indicated in that regard by recommendation 21 of the Third Meeting of the Conference of States Parties to the MESICIC.

Fourth, the Committee will take note of the difficulties and/or weaknesses encountered with respect to achieving the objective envisioned in the Convention provision under review, namely instructing personnel in public entities so as to ensure that they have a proper understanding of their responsibilities and of the ethical rules governing their activities. It will also take note of any specific technical cooperation needs expressed by countries in this regard. The above refers to the group(s) of personnel specified above.

B) PREVENTIVE MEASURES THAT TAKE INTO ACCOUNT THE RELATIONSHIP BETWEEN EQUITABLE COMPENSATION AND PROBITY IN PUBLIC SERVICE (ARTICLE III, PARAGRAPH 12 OF THE CONVENTION)

With respect to the aforementioned provision, the Committee will review whether the State Parties have studied preventive measures that take into account the relationship between equitable compensation and probity in public service and whether they have established objective and transparent criteria for determining the compensation paid to public servants.

V. FOLLOW-UP ON THE IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED IN THE SECOND ROUND AND NEW DEVELOPMENTS RELATED TO THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THAT ROUND^{6/}

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 Twenty-fourth Meeting, in which in connection with the follow-up of recommendations, it endorsed the criterion contained in recommendation 9.a of the Third Meeting of the Conference of MESICIC States Parties, together with the agreement reached by the Committee at its Twenty-fifth Meeting, the Fifth Round will analyze:

- 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 Second Round and regarding which the Committee deemed required additional attention in the reports from the Third Round; and
- b) New developments in relation to the Convention provisions selected for the Second 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 Second Round and regarding which the Committee deemed required additional attention 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 Second 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.

6 . Section V of this methodology, concerning review of the recommendations formulated in the Second Round, does not apply to countries that were not party to the MESICIC when that round was conducted. With respect to those countries, the Committee will analyze their implementation of the provisions that were selected for review in the Second 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 Fifth Round contained in this document.

7 . For the purposes of following up on the recommendations formulated in the Second 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.

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 Second Round, regarding which the Committee found that additional attention was required in the Third Round reports, and it will proceed to take note of those that have been satisfactorily considered and those that require additional attention from the State 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 Twenty-Fourth Meeting, in accordance with recommendation 9(a) of the Third Meeting of the Conference of States Parties to the MESICIC.

Furthermore, in accordance with recommendation 9(c) of the Third 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 Second Round to which the State in question may have drawn attention, as well as of its technical cooperation needs to that end.

Finally, in light of what is provided for in recommendation 11 of the Third Meeting of the Conference of States Parties to the MESICIC, for the purposes of follow-up on the implementation of the recommendations and measures formulated in the Second Round, the Committee will take into account, to the extent it considers relevant, developments in connection with the *National Plans of Action* of those States in which this technical cooperation initiative was undertaken.

Second, the Committee will analyze the new developments occurring in the States in connection with the Convention provisions selected for the Second 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 Second and Fifth 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 34 of the Third Meeting of the Conference of States Parties of the MESICIC.

VII. SOURCES OF INFORMATION AND ON-SITE VISITS

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 replies 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 under review have consented to an on-site visit, information gathered during such an on-site 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.

In order to contribute to the holding of the on-site visit, when the State under review has consented to it, the Secretariat may approach the State in question to consider defraying the costs required thereby.

The agenda of the meetings conducted in the course of the 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 on-site visit, it becomes necessary for the State under review to present further information, that State should remit it to the Secretariat within two weeks from the conclusion of the on-site visit.

Should a State adopt a law subsequent to the date for submitting its response to the questionnaire, it may send that law to the Secretariat 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.

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. REPLIES 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 Fifth 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 replies 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 based on the Convention provisions selected for review in the Fifth Round as well as progress made in the implementation of the recommendations formulated in the Second 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 provisions selected for the Fifth 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 Second 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 replies to the questionnaire.

In addition to the foregoing, in the event that the State 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 SECOND ROUND

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

The foregoing notwithstanding, the review will also take note, with regard to the provisions selected for the Second 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 Second 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 Fifth Round.

The Technical Secretariat will also include, in the questionnaire referred to in the previous paragraph, an optional question for the State under review asking whether it would like to describe a maximum

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

of four best practices related to the Convention provisions selected for the Second and Fifth Rounds that it would voluntarily like to share with the other MESICIC member countries.

In the event that the State under review has granted its consent for an on-site visit, that visit will also cover the *Convention* provisions selected for the Second 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 Fifth Round for States that were not party to the MESICIC in the Second Round, 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 Second Round and the Convention provisions selected for review in the Fifth 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 provisions selected for the Fifth 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 the provisions of the *Convention* selected for the Second Round.