

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
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METHODOLOGY
**FOR THE REVIEW OF THE IMPLEMENTATION OF THE PROVISIONS OF THE INTER-
AMERICAN CONVENTION AGAINST CORRUPTION SELECTED IN THE SECOND
ROUND AND FOR FOLLOW-UP ON THE RECOMMENDATIONS FORMULATED IN THE
FIRST ROUND**

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 eighth meeting, held from September 26 to 30, 2005, the Committee decided that during the second round it would review implementation by States Parties of the following provisions of the Convention: Article III, paragraphs 5 and 8; and Article VI.

Furthermore, Article 29 of the *Rules* refers to “follow-up within the framework of future rounds” and, in its third paragraph, provides that “During the second and subsequent rounds, the country report of each State Party shall address the steps taken to implement the recommendations adopted by the Committee in previous country reports. The country report shall note those recommendations that have been satisfactorily considered and those that need additional attention by the country under review.”

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 second round and for follow-up on the recommendations formulated by the Committee in the country reports adopted in the first round. To this end, the document refers to the objective of the review in the second round, to its framework, and the general and specific criteria used to guide the review of the provisions selected in the second round; considerations with respect to the scope of this review and follow-up on the recommendations formulated in the country reports in the first round; sources of information, the review process; responses and updated responses to the questionnaire; country reports; and participation of civil society organizations.

I. OBJECTIVE OF THE REVIEW IN THE SECOND ROUND

Within the framework of the purposes of the Convention and the Mechanism, the objective of the review in the second round will be to conduct the follow-up of the implementation in each State Party of the Convention provisions selected in the second round, by the review of the existence of a legal framework and of other measures for the implementation of each one of the provisions and, assuming they exist, of their adequacy for the purposes of the Convention, and by an initial review of the State Party's results and progress. Its objective is also to follow up on progress in implementation of the recommendations formulated in the country reports in the first round, pursuant to Article 29 of the *Rules*.

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

The review of the implementation of the provisions selected in the second 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 OF IMPLEMENTATION OF THE CONVENTION PROVISIONS SELECTED IN THE SECOND ROUND

In addition to the principles outlined 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 second 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 second 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 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. 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.

2. 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.

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

As concerns this criterion, the preliminary review shall attempt to examine 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.

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

When in its response to the questionnaire, a state provides statistical data, it shall seek to ensure, if such data relates to implementation of the provisions established in Article III, paragraphs 5 and 8 of the Convention, that such information refers to the two years prior to the date of its response and, in the case of Article VI, to the five years prior to that date.

4. 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.

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

For the review of the selected provisions of the Convention to be considered in the second 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.

1. SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES (ARTICLE III (5) OF THE CONVENTION)

The first provision selected by the Committee for review of implementation by States Parties provides 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:

[...]

5. Systems of government hiring and procurement of goods and services that assure the openness, equity and efficiency of such systems.”

The review of the implementation of the above-transcribed provision shall be divided into the two thematic areas to which it refers: (1) government hiring systems; and (2) government systems for procurement of goods and services.

As regards government hiring systems, the review shall consider if the measures adopted by the States Parties in this respect are designed “to create, maintain and strengthen” such systems that assure “openness, equity and efficiency,” for which purpose, it shall examine aspects such as the system’s governing or administrative authorities and control mechanisms; access to public service through merit-based systems, advertisement in the selection of public servants, indicating the qualifications for said selection; ways to challenge a decision made in the selection system; and relevant exceptions with respect to with the above aspects. The review shall also examine objectives results obtained, including available statistical data.

In relation to government systems for procurement of goods and services, the review shall seek to determine if the measures adopted are designed “to create, maintain and strengthen” such systems that assure their “openness, equity and efficiency,” for which purpose, it shall examine aspects such as the procurement systems with a public tender and without a public tender; the system’s governing or administrative authorities and control mechanisms; registration of pre-approved contractors; electronic methods and information systems for government procurement; public works contracts; identification of the selection criteria for contractors (e.g., price, quality, and expertise); and ways to challenge a selection. It shall also examine objective results obtained, including available statistical data (e.g., percentage of contracts awarded through public tender; sanctions imposed on contractors).

2. SYSTEMS FOR PROTECTING PUBLIC SERVANTS AND PRIVATE CITIZENS WHO, IN GOOD FAITH, REPORT ACTS OF CORRUPTION (ARTICLE III, PARAGRAPH 8 OF THE CONVENTION)

The second provision selected by the Committee for review of implementation by States Parties provides 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:

[...]

“8. Systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with their Constitutions and the basic principles of their domestic legal systems.”

With respect to systems for protecting public servants and private citizens who, in good faith, report acts of corruption, the review will focus on whether the measures considered are designed “to create, maintain and strengthen” such systems, for which purpose, it shall address aspects such as mechanisms for reporting (such as anonymous reporting and protection of the identities of persons who report); mechanisms for reporting threats or reprisals; and witness protection mechanisms. The review shall also address objective results obtained, including available statistical data.

3. ACTS OF CORRUPTION (ARTICLE VI OF THE CONVENTION)

The third provision selected by the Committee for review of implementation by States Parties provides the following:

Article VI.- Acts of Corruption

1. This Convention is applicable to the following acts of corruption:

a. The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions;

- b. The offering or granting, directly or indirectly, to a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions;
 - c. Any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party;
 - d. The fraudulent use or concealment of property derived from any of the acts referred to in this article; and
 - e. Participation as a principal, coprincipal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this article.
2. This Convention shall also be applicable by mutual agreement between or among two or more States Parties with respect to any other act of corruption not described herein. _

The review of implementation of Article VI of the Convention will examine, first, if the acts of corruption described in the first section of that Article are criminalized under domestic law, and the results obtained from enforcement of the provisions that criminalize them, such as the judicial proceedings undertaken and their outcome.

Second, the review will examine, as appropriate, the application of agreements into which the State Party has entered with other States Parties to apply the Convention to acts of corruption not described therein, pursuant to Article VI (2) of the Convention. As regards the results of the respective agreements or conventions, the review shall address aspects such as the judicial proceedings undertaken and their outcome.

V. CONSIDERATIONS WITH RESPECT TO THE SCOPE OF THE FOLLOW-UP ON THE RECOMMENDATIONS FORMULATED IN THE COUNTRY REPORT IN THE FIRST ROUND

In accordance with Article 29 of the Rules, the country report of each State Party shall address the steps taken to implement the recommendations adopted by the Committee in the respective report from the first round and shall note those recommendations that have been satisfactorily considered and those that need additional attention by the country under review.

VI. SOURCES OF INFORMATION

The review 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

The review shall follow the process outlined in its Rules of the Committee, in development of the Report of Buenos Aires.

VIII. RESPONSES TO THE QUESTIONNAIRE

The states shall respond to the questionnaire in accordance with the provisions of Article 21 of the Rules. With respect to the first group of states to be reviewed, the time limit for return of their responses to the questionnaire shall be established in the timetable adopted by the Committee for the second round. With respect to each of the subsequent groups of States Parties to be reviewed, the time limit shall expire one month before the Committee meeting immediately prior to that in which their respective country reports are to be considered.

The responses to the questionnaire by States Parties shall be translated into the working languages of the Committee.

For the purposes of the provisions of Article 26 of the Rules, it is recommended that the responses of the States Parties to the questionnaire not exceed 30 pages. Each State Party may append additional documents it considers to be necessary, which it shall submit for the attention of the members of the Committee in the original language. To that end, the State Party 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 Internet web page of the Mechanism.

IX. COUNTRY REPORT

The draft reports shall be translated into the working languages of the Committee. Pursuant to Article 26 of the Rules, it is recommended that they not exceed 30 pages.

In accordance with Article 25(g) of the Rules, once the report is approved by the Committee, the Technical Secretariat the Secretariat shall publish it on the Internet web page of the Mechanism.

X. PARTICIPATION OF CIVIL SOCIETY ORGANIZATIONS

In accordance with Article 33(b) of the Rules, civil society organizations may present 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 review in the second round. They may also present documents with information related to implementation of the recommendations formulated by the Committee to the State Party in the first round.

In keeping with the second paragraph of Article 35 of the Rules, the Committee will invite civil society organizations to give verbal presentations, in informal meetings, of the documents they presented in accordance with the provisions in the preceding paragraph and in Article 33(b) of the Rules.

Documents submitted by civil society organizations in accordance with this section shall be published on the Internet web page of the Mechanism.

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.