

MECHANISM FOR FOLLOW-UP ON
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
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REPUBLIC OF BOLIVIA

FINAL REPORT

(Adopted at the June 28, 2007 plenary session)

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

**FINAL REPORT ON IMPLEMENTATION IN THE REPUBLIC OF BOLIVIA OF THE
CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE SECOND ROUND, AND
ON FOLLOW-UP TO THE RECOMMENDATIONS FORMULATED TO THAT COUNTRY
IN THE FIRST ROUND¹**

INTRODUCTION

1. Contents of the Report

This report shall refer, first, to the analysis of implementation, in the Republic of Bolivia, of the provisions of the Inter-American Convention against Corruption that were selected by the Committee of Experts of the Mechanism for Follow-up to the Convention (MESICIC) for the Second Round of Analysis. Those provisions are as follows: Article III, paragraphs 5 and 8; and Article VI.

Second, it will address follow-up on implementation of the recommendations that were made to the Republic of Bolivia by the Committee of Experts of the MESICIC in the First Round of Analysis, which are contained in the report on Bolivia adopted by that Committee at its Sixth Meeting, which is published at the following website: www.oas.org/juridico/spanish/mec_inf_blv.pdf

2. Ratification of the Convention and adherence to the Mechanism

According to the official register of the General Secretariat of the OAS, the Republic of Bolivia ratified the Inter-American Convention against Corruption on March 29, 1996, and deposited the respective instrument of ratification on February 4, 1997.

In addition, it signed the Declaration on the Mechanism for Follow-up of Implementation of the Inter-American Convention against Corruption on June 4, 2001.

I. SUMMARY OF INFORMATION RECEIVED

1. Response of the Republic of Bolivia

The Committee wishes to note for the record the cooperation received from the Republic of Bolivia throughout the process of analysis, especially from the Office of the Vice-Minister for Transparency and the Anticorruption Struggle of the Ministry of Justice, which was evident, among other aspects, in its response to the questionnaire, and in its willingness and availability at all times to clarify or complete its contents. Along with its response, the Republic of Bolivia sent in the provisions and documents it considered relevant.

¹ This report was adopted by the Committee in accordance with the provisions of Article 3(g) and 26 of its Rules of Procedure and Other Provisions, at the plenary session held on June 28, 2007, at its Eleventh meeting, held at OAS Headquarters in Washington D.C., United States, June 25-29, 2007.

The Committee took into account, for its analysis, the information provided by the Republic of Bolivia up until November 10, 2006, and that which was requested of it by the Secretariat and by the members of the analysis subgroup for performing their functions under the Rules of Procedure and Other Provisions.

2. Documents received from civil society organizations

The Committee also received, within the time frame set in the Calendar for the Second Round adopted at its Ninth Meeting², a document from the nongovernmental organization “*Por Bolivia-Centro de Desarrollo de Éticas Aplicadas y Promoción del Capital Social*”, which was presented by Transparency International.³

II. REVIEW OF IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE SECOND ROUND

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

1.1. SYSTEMS OF GOVERNMENT HIRING

1.1.1. Existence of provisions in the legal framework and/or other measures

The Republic of Bolivia has a set of provisions related to the above-mentioned systems, among which the following should be noted:

- Constitutional provisions⁴ applicable to public servants in generalⁱ, such as those contained in Articles 43 and 44, which indicate, respectively, that a special law shall establish the Statute on Public Servants, based on the fundamental principle that public officials and employees are exclusive servants of the interests of society as a whole and not of any partiality or political party whatsoever, and that the Statute shall establish the rights and duties of public officials and employees of the Administration, and shall contain the provisions that guarantee the administrative career service, as well as the dignity and efficacy of public service.

- Statutory and other legal provisions applicable to a majority of public servants, among which note is made of the following:

- Law No. 1178 on Governmental Administration and Control (SAFCO Law)⁵, which regulates the systems for administering and maintaining control over government resources, and how they relate to the national planning and public investment systems, one of which is the Personnel Management System (SAP: *Sistema de Administración de Personal*)ⁱⁱ, which, in the search for efficiency in public service, will determine, among other aspects, the work posts actually necessary and the requirements and mechanisms for providing for them (Article 9). Article 20 establishes the basic powers of the lead agencies of such systems, providing in Article 22 that the Ministry of Finance (now the Ministry of Treasury)ⁱⁱⁱ shall be the fiscal authority and lead agency of the SAP.

² This meeting was held March 27 to 31, 2006, at OAS headquarters.

³ This document was received by email on November 10, 2006, and can be found at:

www.oas.org/juridico/spanish/mesicic2_blv_inf_sc_sp.pdf

⁴ Available at: www.presidencia.gov.bo/leyes_decretos/constitucion_estadoP.pdf

⁵ Available at: www.oas.org/juridico/spanish/mesicic2_blv_ley_1178_sp.pdf

- Law No. 2027, the Statute on Public Officials (EFP, *Estatuto del Funcionario Público*)⁶, amended by Law No. 2104⁷, which at Articles 18, 19, and 23 establishes, respectively, the administrative career service, staffing procedures, and the principles of merit, competence, and transparency that recruitment processes are based on, through internal and external announcements. Article 56 designates the Ministry of Treasury (*Ministerio de Hacienda*) as the lead agency of the SAP through the National Personnel Management Service (SNAP, *Servicio Nacional de Administración de Personal*).⁸ Article 57 creates the Superintendency of the Civil Service (SSC)⁹ for the purpose of supervising the regime and administration of the administrative career service in the public entities reached by the EFP.^{iv} The Statute also establishes an administrative procedure for processing claims relating to entry into, promotion, and retirement from the administrative career service and those arising from disciplinary procedures (Article 65). Decisions on entry may be challenged by a motion for reconsideration before the same authority that issued the decision, and resolutions denying such appeals may be challenged before the SSC by means of an appeal before a higher administrative authority (*recurso jerárquico*) (Article 66).

- Law No. 3351 on the Organization of the Executive Branch (LOPE)¹⁰, which at Article 3(i), establishes as one of the general powers of the Ministers the designation and removal of the personnel in their ministries in keeping with the rules and procedures established for the public sector.

- Supreme Decree No. 25749, which approves the Regulation of the Partial Development of Law No. 2027, the Statute on Public Servants¹¹, which at Title IV, single chapter, regulates the incorporation of public servants into the administrative career services established by Article 18 of the EFP.

- Supreme Decree No. 26115, which approves the Basic Rules of the Personnel Management System (NB-SAP)¹², whose application and use are obligatory in public sector entities (Article 2)^v except for the positions indicated at its Article 3^{vi} (persons who occupy those positions elected by national or local vote, by powers conferred by the Constitution, or specific laws to the Legislative branch, the President of the Republic, the Executive branch, the Judicial branch, or the entity in question). Article 18 establishes, first, the recruitment process based on the principles of merit, competence, transparency, and by the modalities of direct invitation^{vii} or public notice (internal or external).^{viii} Second, it establishes that selection of personnel shall be based on merit, capacity, aptitude, work experience, personal qualities, and having completed said recruitment process.

- Supreme Decree No. 26319 which approves the Regulation of Motions for Reconsideration (*Recursos de Revocatoria*) and Appeals before Higher Administrative Authorities (*Recursos Jerárquicos*) for the Administrative Career Service¹³, which at Articles 29 and 33 establish, respectively, the admissibility and processing of both types of motions.

⁶ Available at: www.oas.org/juridico/spanish/mesicic2_blv_ley_2027_sp.pdf

⁷ Available at: www.oas.org/juridico/spanish/mesicic2_blv_ley_2104_sp.pdf

⁸ See www.snap.gov.bo

⁹ See www.ssc.gov.bo

¹⁰ Available at: www.fndr.gov.bo/doc_normas/LEY3351.pdf

¹¹ Available at: www.oas.org/juridico/spanish/mesicic2_blv_decreto_25749_sp.pdf

¹² Available at: www.oas.org/juridico/spanish/mesicic2_blv_ley_1178_sap_sp.pdf

¹³ Available at: www.ssc.gov.bo/leyes/DS26319.pdf

- Administrative Resolution SSC-001/2002, which approves the Rules of Procedure for Incorporation into the Administrative Career Service¹⁴, which at Chapter II defines and regulates the modalities of transitory and continuous incorporation, establishing the general requirements that the public entities should demand for entry as a public servant under any of these modalities, and which at Chapter III describes the administrative procedure that will be followed by the SSC for incorporating public servants into the administrative career service; and it regulates the claims against the decisions of the public entities (Article 53) and the challenges and appeals brought both by public employees and by the offices against the rulings handed down by the SSC on incorporation (Articles 54 and 55).

- Administrative Resolution SSC-002/2002 approving the Regulation on Authorization and Certification of Private Entities Specialized in the Selection of Personnel for the Public Sector¹⁵, which at Article 13 requires these institutions to assure the highest quality in the provision of services as advisers to public offices that hire them and engage in selection processes by means of fair, transparent, and competitive public job announcements and merit-based competitive hirings.

- Administrative Resolution SSC-003/2002 that approves the Regulation for Authorizing on an Exceptional Basis the Performance of Public Functions in the case of Incompatibility due to Relationship or Marriage¹⁶ applicable to public servants who work in the same entity, which at Article 5 provides that the SSC shall analyze and verify the documentation submitted, in accordance with Article 4, by the interested persons, and, if there are justified motives without any observation, it will authorize the exception.

- The Regulation on Supervision¹⁷, which defines the process of oversight by the SSC of human resources management in the public sector.

- Various legal provisions applicable to the public servants of the Legislative branch, among which note is made of the following:

- Law No. 1907¹⁸, which at Article 1 notes that the personnel who go to work for the Legislative branch shall do so in their capacity as public servants, and shall not be subject to the General Law on Work or any other legal, regulatory, complementary, and concomitant provisions, due to his or her legal status as a public servant.

- The General Regulation of the Office of the Vice-President of the Republic – Presidency of the National Congress¹⁹, which at Article 57 provides for the existence of two types of administrative personnel in the legislative branch, those freely designated, appointed by resolution of the President of the National Congress and subject to the responsibilities established by the laws and internal rules (Article 58) and those in the career service, subject to the EFP and to the internal provisions and rules of the Legislative branch (Article 60). Article 59 notes that the President of the Congress shall designate the area directors, in keeping with the procedures indicated in the Specific Regulation of the Personnel Management System of the Legislative branch, while the hiring of administrative personnel shall conform to the Rules and Procedures of the Regulation on the Procurement of Goods and Services of the Legislative branch (Article 61).

¹⁴ Available at: www.oas.org/juridico/spanish/mesicic2_blv_ssc_carr_admin_sp.pdf

¹⁵ Available at: www.oas.org/juridico/spanish/mesicic2_blv_ssc_aut_ent_sp.pdf

¹⁶ Available at: www.oas.org/juridico/spanish/mesicic2_blv_ssc_reg_aut_exc_sp.pdf

¹⁷ Available at: www.oas.org/juridico/spanish/mesicic2_blv_ssc_reg_supervision_sp.pdf

¹⁸ Available at: www.comunica.gov.bo/index.php?i=enlace&j=documentos/leyes/L-1907.html

¹⁹ Available at: www.vicepres.gov.bo/organizacion/REGLAMENTO%20GENERAL.pdf

- The General Rules of Procedure of the Honorable National Senate²⁰, which at Article 215 provides that the members of the administrative personnel of the Senate shall have the status of public servants under a career service regime and stability in their posts that accords priority to merit, efficiency, and constantly striving for improvement in public service.

- The General Rules of Procedure of the Honorable Chamber of Deputies²¹, which at Articles 173 and 174 indicate, respectively, that the permanent staff of the Chamber shall have the status of public servants and as such shall be subject to the regime and provisions of the SAP, while the officials and employees of the administrative staff shall be appointed in keeping with the Manual of Positions and Personnel Functions, seeing to professional qualifications and under a regime of stability of public servants and administrative career service.

- Statutory and other legal provisions applicable to the public servants of the Judicial branch, among which mention is made of the following:

- Law No. 1455 on Judicial Organization²², which at its Article 4 provides that the Ministers of the Supreme Court of Justice will be elected by the Chamber of Deputies from three-person slates proposed by two-third of all members of the Senate; the members of the District Courts shall be elected by the Senate itself to be proposed in groups of three agreed upon by the vote of two-thirds of the members of the Supreme Court and the judges will be elected by the Supreme Court from three-person slates proposed by two-thirds of the votes by the respective Superior District Court.

- Law No. 1817 on the Judicial Council²³, which at Article 22 establishes the judicial career service as a system that recognizes merit and the progressive accreditation of knowledge and legal training emerging from procedures for internal and external job announcements. This system includes the *ministros*, *vocales*, judges, and clerks of court (Article 23), and is made up of the systems of entry; evaluation, and permanence; education and training; and information (Article 24). The entry subsystem takes in merit-based contests, competitive examinations, and training courses. Article 29 establishes the personal selection system as a process of training and selection of suitable human resources whose technical knowledge will cover the requirements inherent to the administrative service. Unlike the career service system, the personnel selection system includes the managers, notaries public, registrars of real property, assistants and officers of the courts and administrative support staff from the Judicial branch.

- Decision No. 239/2003 approving the Rules of Procedure of the Judicial Career Service System, which at Article 15 ff. sets forth the requirements and modalities of admission into the subsystem of entry to the judicial career service, which in any event will include merit-based competitive hiring, competitive examinations, and training courses.

- Decision No. 247/2003 approving the Rules of Procedure of the Administrative Career Service of the Judicial branch, which at Articles 18 and 22 establishes, respectively, the conditions precedent to being admitted in the administrative career service and the procedure for entering it.

²⁰ Available at: www.senado.bo/Default.aspx?tabid=94

²¹ Available at: www.diputados.bo/Default.aspx?tabid=145

²² Available at: www.congreso.gov.bo/11leyes/leyes/1455.htm

²³ Available at: www.congreso.gov.bo/11leyes/leyes/1817.htm

- Decision No. 135/2005, which approves the Rules of Procedure of Judicial Support Staff²⁴, which at Articles 13, 14, and 15 establishes, respectively, the requirements, announcements, and selection processes for entry to this category of public servant.

- Statutory and other legal provisions applicable to the public servants of the Public Ministry, of which specific mention is made of the following:

- Organic Law No. 2175 of the Public Ministry (LOMP)²⁵, which at Article 36, section 16, provides that one of the powers of the Attorney General of the Republic (*Fiscal General de la República*) is to designate the administrative staff of this office, in keeping with the applicable rules. In addition, Article 87 establishes the prosecutorial career service based on recognition of merit and the progressive accreditation of knowledge and legal training. The prosecutorial career service includes the district prosecutors, the appellate prosecutors, the subject-matter prosecutors, and the assistant prosecutors, and is made up, among others, by a planning subsystem and an entry subsystem (Article 89) that includes: (1) internal and external public announcements; (2) selection, by merit-based competitive processes, competitive examinations, and competence; and (3) incorporation and induction (Article 90).

- The Internal Regulations of the Public Ministry²⁶, which at Article 40, section 21, reiterates as one of the powers of the Attorney General of the Republic designating the administrative staff in keeping with the rules and as per operational needs. Article 138 provides that entry to the prosecutorial career service will take place in its different categories by taking and passing competitive and skills-based examinations established as per the rules, as well as theoretical and practical courses to be held at the Training Institute of the Public Ministry based on the principles of equality, merit, and capacity (Article 139). That procedure for entry shall be regulated by the Internal Regulations on Planning and Entry and on Promotion and Evaluation (Article 140).

- The Regulation on Entry to and Planning of the Prosecutorial Career Service of the Public Ministry²⁷, which at Article 9 regulates entry to this career service, which will be by designation of the Chamber of Deputies for district prosecutors (Article 39 LOMP) and by passing selective tests (merit-based competition; competitive and skills examinations; personal interview; and getting past the two-year test period) for all other categories (Articles 90 and 96 of the LOMP).

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

With respect to the constitutional and statutory provisions referring to the main government hiring systems that the Committee has examined based on the information that has been available to it, one can observe that they constitute a set of measures relevant for promoting the purposes of the Convention.

Even so, the Committee considers that it should make some observations about the advisability of Bolivia considering supplementing, developing, and adapting certain provisions that refer to those systems.

²⁴ Available at: www.poderjudicial.gov.bo/main1.php?page_id=3003

²⁵ Available at: www.fiscalia.gov.bo/fiscalia/zip/nlompley2175.zip

²⁶ Available at: www.fiscalia.gov.bo/fiscalia/zip/reg-interno.zip

²⁷ Available at: www.fiscalia.gov.bo/fiscalia/zip/planif-ingreso.zip

- As regards the majority of public servants, the Committee considers the following:

The EFP and the NB-SAP constitute, due to the general nature of their scope of application, and their directly treating the issue, the legal bodies with the broadest reach with respect to the systems for hiring public officials. Both instruments establish, at Articles 23 and 18 respectively, the procedures for recruitment and selection of personnel based on the principles of merit, competence, transparency, and by internal and external job announcements. Nevertheless, the Committee considers advisable that the State under review continues strengthening the above-mentioned provisions to the stages that integrate the processes of recruitment and selection of personnel, by the adoption of provisions and criteria that better define the requirements of the announcements, as well as on the perform and bases of the merit-based and/or examinations of opposition. (See recommendation 1.1.1(a), section 1.1, chapter III of this report).

The Committee also observes that the provisions of the EFP, according to Article 5, are applicable only to the category “career service staff”. Nevertheless, Article 18 of the NB-SAP establishes that personnel recruitment may be by “direct invitation” or “public announcement,” noting that the direct invitation is for persons who have high personal and professional merits to cover positions held by designated officials and persons of proven professional, technical, administrative, or auxiliary training, freely appointed and for direct support. On the other hand, Article 53 of the EFP establishes that the number and functions of freely appointed staff will be established by the National Service of Personnel Management. In that regard, and with the aim of emphasizing the principles contained in the Convention, it is important that the Republic of Bolivia consider developing, through the appropriate legal and administrative procedures, the mode of recruitment by “direct invitation” based on the principles of merit, competence, equality and transparency, which assure publicity, equity, and efficiency in the hiring of this category of public officials in keeping with Article III(5) of the Convention. (See recommendation 1.1.1(b), section 1.1 of chapter III of this report).

Article 6 of the EFP provides that those persons who are working on a temporary basis or to provide specific or specialized services and have a contract with a public entity are not subject to its regime or to the General Labor Law; their rights and obligations are regulated by the contract itself and the applicable legal order; the procedures, requirements, conditions, and form of contracting are regulated by the Basic Rules of the System for the Administration of Goods and Services. In this respect, the Committee is concerned about the situation of those private persons who, on a temporary basis or for the provision of specific or specialized services, are tied by non-labor contracts to the public administration, without there being clear and well-defined rules that regulate that relationship, their functions, and the corresponding liability regime. The Committee underscores the importance of Bolivia considering the adoption, through the applicable legal and administrative procedures, of rules and mechanisms that regulate the hiring into the public administration of temporary personnel and personnel who provide specific or specialized services that ensure reliable verification of the suitability, merits, competence, and attitude towards work that are adequate for the performance of their functions, based on the principles of equality, publicity, transparency and respect to the labor rights enshrined in the Convention. (See recommendation 1.1.1(c), section 1.1, chapter III of this report).

In addition, Article 6 of the NB-SAP provides that the public institutions indicated in Article 2 should, among other things, prepare and update its Specific Regulation of the SAP in keeping with the provisions, to that end, issued by the SNAP, and with that facilitate the efficient and effective management of the entity’s staff and strengthen its system for hiring public servants. Given the advisability of having such a set of rules in each entity, the Committee considers it useful for Bolivia

to consider promoting the adoption and updating of the Specific Regulation of the SAP and to grant the SNAP the oversight powers it needs to verify adequate compliance with that obligation. (See recommendation 1.1.1(d), section 1.1, chapter III of this report).

In addition, the Committee observes a lack of provisions aimed at preventing nepotism in the public service, and, in this regard, urges Bolivia to adopt an instrument aimed at preventing and punishing appointments and hiring of personnel that benefit relatives or family members, as well as their direct or indirect involvement in such appointments or hiring with the purpose of preserving the principles of equality, transparency and respect to the labor rights that the Convention enshrines. (See recommendation 1.1.1(e), section 1.1, chapter III of this report).

As for the National Service of Personnel Management (SNAP), the lead agency of the SAP, and the Superintendency of Civil Service (SSC) described in the previous section, the Committee observes that the set of provisions on the topic constitutes an adequate regime for the administration and control of systems for hiring public servants. Nonetheless, the Committee considers it advisable for the Republic of Bolivia to continue strengthening such organs, such that they have the support and resources they need, in the event they are insufficient, to appropriately perform their functions, and to develop and, as appropriate, strengthen those mechanisms that make possible the effective institutional coordination of their actions. (See recommendation 1.1.1(f), section 1.1, chapter III of this report).

The Committee also considers it advisable for Bolivia to consider implementing programs or prior training so that those who enter the public service already know their duties of probity and the functions inherent to their positions. (See recommendation 1.1.1(g), section 1.1, chapter III of this report).

- As regards the Legislative branch, the Committee offers the following considerations:

The General Regulation of the Office of the Vice-President of the Republic-Presidency of the National Congress provides for two types of administrative personnel in the legislature, those freely designated, appointed by resolution of the President of the National Congress and subject to the liabilities established by statute and internal rules, and the career service staff, subject to the EFP and the internal rules of the Legislative branch. In addition, the General Rules of Procedure of the Honorable National Senate provides that the members of its administrative staff shall be public servants, and a career service regime will be established in this respect; for its part, the General Rules of Procedure of the Honorable Chamber of Deputies provides that its staff will have that same status and therefore will be subject to the SAP.

Based on the foregoing, and reiterating the considerations in relation to the majority of public servants, the Committee calls attention to the importance of the Republic of Bolivia analyzing the possibility of strengthening, through the applicable legal and administrative procedures, the systems for hiring public servants in the legislature so as to assure publicity, equity, and efficiency. In this regard, it is suggested that clearer and more specific provisions be adopted that regulate the system of entry to the Legislative branch based on the principles of merit, equality, and transparency, including mechanisms of control and guiding or administrative authorities of the system who assume the responsibility of overseeing compliance with the selection rules and means of announcing job opportunities, as well as challenge remedies that seek to clarify, modify, or overturn substantive acts of the selection processes in the legislature. (See recommendation 1.1.2, section 1.1, chapter III of this report).

- As regards the Judiciary, the Committee observes as follows:

The Republic of Bolivia has a well-developed regime with respect to the hiring of public servants in the judicial sphere, which is reflected in Law No. on Judicial Organization and Law No. 1817 on the Judicial Council, and in the Rules of Procedure of the Judicial Career Service System, the Administrative Career Service of the Judicial branch, and for Judicial Support Staff cited in the previous section. Even so, it is advisable for Bolivia to consider supplementing this regime by including clearly defined criteria on announcing job opportunities or vacancies or positions that need to be filled in the judiciary, their content and form, as well as the lead time with which they are to be disseminated, taking into account the use of the mass media, such as national circulation newspapers and/or websites. (See recommendation 1.1.3, section 1.1, chapter III of this report).

- As regards the Public Ministry of the Nation, the Committee considers as follows:

As in the Judiciary, Bolivia has a developed system for hiring public servants in the Public Ministry. The system is contained mainly in the Organic Law of the Public Ministry and its Internal Regulation and the Regulation for Entry and Planning of the Prosecutorial Career Service, also cited in the previous section. Nonetheless, the Committee notes an insufficiency of provisions that establish and develop challenge remedies that seek to clarify, modify, or overturn substantive acts in the personnel selection processes, such as the terms of competitive hiring procedures, the rejection of applicants, the designation of winners, appointments to positions of trust, etc. Accordingly, the Committee will recommend to Bolivia that it consider supplementing its system for hiring public servants in the Public Ministry by implementing mechanisms for challenging decisions based on the principles of due process and legality. (See recommendation 1.1.4, section 1.1, chapter III of this report).

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

With respect to the results in this area, the Republic of Bolivia notes that the SSC, in its five years as the entity entrusted with validating the selection processes for the entry of public servants to the administrative career service, has received a total of 6,511 requests to join, from 90 different public entities; and that of those 6,511 requests, 5,370 have been resolved, with 4,100 persons entering the administrative career service, and 1,270 having been denied; an additional 1,141 requests are pending resolution.²⁸

In addition, in light of the important power that the EFP confers on the SSC at Article 61(e), on maintaining the record of entry, evaluation, permanence, mobility, and retirement of career service staff, the Committee makes a special appeal to the Republic of Bolivia to consider paying more attention to that power by adopting the measures it deems pertinent for ensuring its effective implementation. (See recommendation 1.1.5, 1.1, chapter III of this report).

Finally, and considering that there is no information additional to the foregoing, nor any data on the legislative and judicial branches, or the Public Ministry, the Committee cannot make an integral assessment of the results in this area; accordingly, it will make a recommendation in this regard. (See general recommendation at section 4.2 of chapter III of this report).

²⁸ Response of the Republic of Bolivia to the questionnaire, p. 6. This document is available at: www.oas.org/juridico/spanish/mesicic2_blv_resp_sp.doc

1.2. GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES

1.2.1. Existence of provisions in the legal framework and/or other measures

The Republic of Bolivia has a set of provisions regarding the systems referred to, among which special mention should be made of the following:

- Statutory and other legal provisions applicable to the entities of the State generally, including the following:

- Law No. 1178 on Governmental Administration and Control (SAFCO Law)²⁹, which regulates the systems of administration and control of state resources and its relationship with the national planning and public investment systems, including the System for the Administration of Goods and Services (SABS)^{ix}, which establishes the contracting, administration, and disposition of goods and services in the state entities (Article 10)^x. Article 20 points out the basic powers of the lead agencies of those systems, designating the Ministry of Treasury as the fiscal authority and lead agency of the SABS, in keeping with Article 4 of Law No. 2446³⁰ on Organization of the Executive Branch (Article 22).

- The consolidated text of Supreme Decree No. 27328³¹ on Processes for the Procurement of Goods, Works, General Services, and Consulting Services (consolidated text of Supreme Decree No. 27328), which at Article 1, section II, provides that said decree, its Regulation³² (Ministerial Resolution No. 760)³³ and the Model Terms and Conditions^{xi} that are an integral part of it shall be compulsory for all public sector entities encompassed in Articles 3 and 4 of the SAFCO Law and any other public entity with legal personality of public law that is not expressly indicated in that law. Among the provisions of these legal texts special mention should be made of the following:

- Article 13 of the consolidated text of Supreme Decree No. 27328, which provides that government procurement of works, goods, and general services shall be by the modalities of: (a) public bidding (Articles 19 to 31 of the consolidated text of Supreme Decree No. 27328 and Articles 30 to 61 of the Regulation); (b) small-scale procurement by comparison pricing (Article 32 of the consolidated text of Supreme Decree No. 27328 and Articles 62 to 66 of the Regulation); and (c) procurement by exception^{xii} (Article 33 of the consolidated text of Supreme Decree No. 27328 and Articles 71 to 73 of the Regulation) and Articles 67 to 70 of the Regulation, which establish direct procurement and by price comparison.

For the contracting of consulting services, Article 13 of the consolidated text of Supreme Decree No. 27328 also establishes the modalities of: (a) contracting by request for proposals (Articles 35 to 44 of the consolidated text of Supreme Decree No. 27328 and Articles 76 to 114 of the Regulation); (b) small-scale contracting of consulting firms (Article 45 of the consolidated text of Supreme Decree No. 27328 and Articles 115 to 127 of the Regulation); (c)

²⁹ *Supra* note 5.

³⁰ Available at: www.fndr.gov.bo/doc_normas/ley2446.pdf

³¹ The consolidated text of Supreme Decree No. 27328 of January 31, 2004 with the modifications incorporated by Supreme Decrees Nos. 27540, 27877, 28136, and 28271, drawn up in keeping with Article 20 of Supreme Decree No. 28271, of July 28, 2005, is available at: www.sicoes.gov.bo/normativa/docs/ds27328.pdf

³² Available at: www.sicoes.gov.bo/normativa/docs/reg27328.pdf

³³ Available at: www.sicoes.gov.bo/normativa/images/RESOLUCION_05_760.gif

contracting of consulting services by exception (Article 46^{xiii} of the consolidated text of Supreme Decree No. 27328 and Articles 132 to 134 of the Regulation); and (d) contracting of individual consulting services (Article 47 of the consolidated text of Supreme Decree No. 27328 and Articles 128 to 131 of the Regulation), and Articles 48, 48 bis, 48 ter, 48 quarter, and 48 quinquies of the consolidated text of Supreme Decree No. 27328 and Articles 135 to 144 of the Regulation, which establish other types of procurement for specific purposes;

- Article 4 of the consolidated text of Supreme Decree No. 27328 and Article 3 of the Regulation, which establish, in addition to the powers referred to in Article 20 of the SAFCO Law, the specific functions and responsibilities of the Ministry of Treasury as the lead agency of the SABS. Article 5 of the consolidated text of Supreme Decree No. 27328 and Article 4 of the Regulation, which indicate the responsibilities of the Maximum Executive Authority^{xiv} in charge of the procurement process from beginning to award, as well as the signing and administration of the contracts. Article 15 of the consolidated text of Supreme Decree No. 27328, which establishes the Scoring and Reception Committees; the first is responsible for opening the proposals, analyzing the evaluating the legal and administrative documents, evaluating and scoring the technical, economic, and, when applicable, financial proposals, and drawing up the report and recommendation regarding the award; the second is responsible for receiving the good, work, or service and giving its conformity, having verified compliance with the terms of the contract. Articles 26 and 27 of the Regulation establish the conditions, designation of members, and functions of both committees.
- Article 4 of the consolidated text of Supreme Decree No. 27328, which establishes as one of the powers of the Ministry of Finance, in its capacity as lead agency of the SABS, administering and progressively implementing the Public Registry of Suppliers. And additional provision 8 of the same legal instrument, which indicates that said registry will be organized for the sectors of consulting, construction of public works, insurance, supply of goods, provision of general services, and another sector for contracting;
- Article 34 of the consolidated text of Supreme Decree No. 27328, which establishes the possibility of procuring goods and services by electronic media, in the context of a special regulation that will govern the use of these media. Articles 182, 183, and 184 of the Regulation, which provide for the organization, functioning, and means of registering information of the State Procurement Information System (SICOES)^{xv}, which was developed by the General Bureau of Government Administration Systems of the Vice-Ministry of Budget and Accounting, Ministry of Treasury, and which allows for the registration and publication of relevant information on the procurement processes of public entities, main objective being to ensure the transparency of such procedures. The SICOES generates information and statistical reports on trends in government procurement; this information is disseminated to the public sector, private sector, and civil society through its website, www.sicoes.gov.bo, which contains information on procurement procedures, requests for proposals, awards, and contracts for goods, works, general services, and consulting services; administrative appeals filed, number of procurement operations by exception, applicable laws and regulations, statistics, etc.;
- The provisions of the Model Terms and Conditions for the Procurement of Works³⁴ approved by Ministerial Resolution No. 533³⁵ which, pursuant to Article 16 of the consolidated text of

³⁴ Available at: www.sicoes.gov.bo/normativa/docs/obras.doc

³⁵ Available at: www.sicoes.gov.bo/normativa/images/RESOLUCION_05_533.gif

Supreme Decree No. 27328, constitutes, without exception, the basic document, whose use is compulsory, for the preparation of any set of terms and conditions for public works procurement. This model includes an instruction sheet on preparation of the terms and conditions, instructions for the bidders, technical specifications, bid forms, systems and data sheets for evaluation, as well as model contracts;

- Article 2 of the consolidated text of Supreme Decree No. 27328, which establishes the principles of equality, equity, transparency, economy, efficacy, efficiency, accountability, free competition, good faith, and confidentiality as criteria that govern procurement procedures in the public sector; and
- Article 60 of the consolidated text of Supreme Decree No. 27328, which establishes the administrative remedy of challenge as a way to make a claim over administrative acts that are part of the procurement process, by which bidders may appeal, before the same authority that issues them, those resolutions indicated in Article 61^{xvi} of the consolidated text of Supreme Decree No. 27328, so long as those resolutions affect, harm, or may cause damage to their legitimate interests. The administrative remedy of challenge shall not be admissible against those preparatory acts that are merely procedural, including reports, expert opinions, or inspections, or against any other act or resolution not expressly indicated in Article 61. The order resolving an administrative challenge may be appealed through the contentious-administrative process regulated by the Code of Civil Procedure (Articles 155 to 169 of the Regulation).

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

With respect to the statutory and regulatory provisions that refer to the main systems for government procurement of goods and services, which the Committee has examined based on the information available to it, one can observe that they constitute a set of measures relevant for furthering the purposes of the Convention.

Nonetheless, the Committee takes this opportunity to make a few observations on the importance of the Republic of Bolivia considering supplementing, developing, and adapting the legal framework and measures on public-sector procurement of goods and services, mindful of the following:

Article 1 of the consolidated text of Supreme Decree No. 27328 indicates that its regulations and the model terms and conditions that are part of it are intended to establish the principles, rules, and conditions that regulate the procedures for procurement of goods, works, general services, and consulting services, and the obligations and rights that derive from these. In this regard, Article 13 of the consolidated text of Supreme Decree No. 27328 establishes the modalities of procurement, public bidding being the one whose use is normal and obligatory under Article 19. Article 19 provides that a public bidding may be issued by a public call for tenders, for national procurement of goods^{xvii}; with national call for tenders^{xviii} and international call for tenders.^{xix} Nonetheless, there are other modalities, such as minor procurement, by comparative pricing (Article 32 of the consolidated text of Supreme Decree No. 27328) which may be used when the approved budget is less than that of bidding, with public notice for domestic procurement, which is equivalent to one hundred sixty thousand one bolivianos³⁶ (Bs. 160,001.00); and procurement by exception, which allows the Maximum Executive Authority to procure goods, works, and general services without public bidding

³⁶ Exchange rate: Bs. 7.91 = US\$ 1.00

or obtaining quotes or proposals solely and exclusively in the cases provided for in Article 33 of the consolidated text of Supreme Decree No. 27328 and Article 71 of the Regulation.

As regards the regime of exceptions to the bidding procedure established in the articles cited above, the Committee notes that the grounds contained in those provisions are not developed clearly and in detail, which could provoke, among other effects, a violation of the principle of the obligatory nature and normal use of public bidding in the system for procurement of goods, works, and general services provided for in Article 19 of the consolidated text of Supreme Decree No. 27328. In that regard, and in order to confer greater transparency on the regime of exceptions in force, and to facilitate its proper applicability, Bolivia could develop the grounds for exceptions to public bidding provided for at Article 33 of the consolidated text of Supreme Decree 27328 and Article 71 of the Regulation to prevent their improper and/or discretionary use. (See recommendation 1.2.1(a), section 1.2, chapter III of this report).

As for the modality of direct procurement, Article 67 of the Regulation of the consolidated text of Supreme Decree No. 27328 provides: “*direct procurement has as its objective meeting minor and urgent needs and is that which is done routinely, expeditiously, and functionally, that does not require quotes or proposal; it shall apply when the budget is not greater than the amount set by each entity. The amount and procedure for these procurement operations shall be indicated and developed by each public entity in its Specific Regulation on Procurement.*” Based on the foregoing, the Committee is struck, among other aspects, the lack of a general regime of amounts that sets amounts for determining the applicability of procurement operations of this type. This lack of objective elements and specific parameters could allow for the inappropriate use of this modality of contracting, provoking a detriment to the net worth of the entity and therefore of the State. In this regard, the Committee urges the Republic of Bolivia to consider establishing, through a general mechanism, defined parameters that enable the public entities to set, in their specific regulations, objective amounts for determining the applicability of such procurement operations. (See recommendation 1.2.1(b), section 1.2, chapter III of this report).

With respect to the Ministry of Treasury, in its capacity as the lead agency of the SABS, one observes that the set of provisions Bolivia has in this area, such as those contained in the SAFCO Law, Law No. 2446 of Organization of the Executive Branch and of the consolidated text of Supreme Decree No. 27328 and its Regulation, constitute an adequate regime for the administration and control of the system. Nonetheless, the Committee invites Bolivia to continue strengthening that agency, in particular its General Bureau for Government Administration Systems of the Vice-Ministry of Budget and Accounting, so that it has the support and resources necessary, should they be insufficient, for the appropriate performance of its functions. (See recommendation 1.2.2, section 1.2, chapter III of this report).

In addition, as for the control mechanisms, the Committee notes an insufficiency of provisions that establish sanctions for contractors and public officials who breach or violate the provisions that govern the procurement of goods, works, general services, and consulting services in Bolivia, without prejudice to the Regime of Liability for Public Service, established at chapter V of the SAFCO Law, the applicable provisions of the EFP, as well as the Imperatives for the Ethical Conduct of Public Servants Involved in Government Procurement of Goods and Services (annex to the consolidated text of Supreme Decree No. 27328). Accordingly, it is important that the Republic of Bolivia consider developing and implementing, through the corresponding authority, a regime of sanctions for contractors and public officials who breach the principles and duties in respect of government procurement. (See recommendation 1.2.3(a), section 1.2, chapter III of this report).

Similarly, and in order to provide mechanisms of control additional to the already-existing ones, Bolivia could develop and implement rules that provide for selecting an entity to undertake the work of invention, monitoring, and oversight of contracts of given amounts and/or complexity, as well as establishing citizen review mechanisms to monitor pre-contract procedures and the implementation of those contracts which, given their nature, importance, and/or magnitude, so require. (See recommendations 1.2.3(b) and (c), section 1.2, chapter III of this report).

As regards the existence of a registry of contractors, Article 4 of the consolidated text of Supreme Decree No. 27328 establishes as one of the powers of the lead agency administering and progressively implementing the Public Registry of Suppliers. Nonetheless, Bolivia notes³⁷ in its response that *“to date there is no public registry of contractors,”* nor is there a *“domestic legal rule that has established such a registry.”* Therefore, the Committee urges the Republic of Bolivia, in keeping with the above-cited article, and through the corresponding offices of the lead agency of the SABS, to consider implementing the Public Registry of Suppliers, using, for example, computer technology to set it up, update it, and consult it. This registry could contain data on contractors’ record of performance or non-performance; area of work and/or specialty; technical and economic capacity; type of firm; and other information considered relevant. In addition, if the State considers it pertinent and its domestic law so allows, inclusion in such a registry could be made a requirement for pre-qualification for being able to enter into public-sector contracts in those modalities whose execution requires, for example, a level of professional suitability, technical capacity, and/or given experience. (See recommendation 1.2.4., section 1.2, chapter III of this report).

Article 34 of the consolidated text of Supreme Decree No. 27328, which refers to electronic procurement, alludes to the existence of a special system that will regulate, among other aspects, the use of these media and acknowledge the validity of the transactions, signatures, and electronic documents that guarantee their transparency, authenticity, and confidentiality. Nonetheless, no such regulation is identified; given the importance of the State having such a law or regulation, the Committee will make a recommendation in this respect. (See recommendation 1.2.5(a), section 1.2, chapter III of this report).

On the information systems for public procurement, the Committee recognizes the steps taken in the context of the SICOES, especially through the website www.sicoes.gov.bo and, in this regard, urges the Republic of Bolivia to continue developing and strengthening such actions, whose purpose is to ensure the transparency, publicity, equity, and efficiency of the systems for the procurement of goods and services established by the Convention. (See recommendation 1.2.5(b), section 1.2, chapter III of this report).

In addition, in order to increase the transparency of procurement processes, the Committee suggests that the Republic of Bolivia study the possibility of, when appropriate, publishing pre-bidding terms and conditions so that interested parties can find out about them and submit comments thereon. (See recommendation 1.2.6, section 1.2, chapter III of this report).

Finally, and without prejudice to the provisions in place for public procurement operations in general, and the existing Model Terms and Conditions for the Contracting of Works, the Committee is of the view that Bolivia could supplement its regime for the contracting of public works by including the following measure:

³⁷ Response of the Republic of Bolivia to the questionnaire, p. 11.

- Consider implementing control systems for each public works contract in particular which, mindful of its magnitude, provide for the work of intervention or direct supervision of the performance of the contract by the contracting entity or whoever it may designate; allow for some civic review mechanisms or citizen oversight activities; impose the duty of a periodic rendering of accounts regarding the development of the contract; and make it possible to determine whether the expected cost-benefit ratio was actually obtained and whether the quality of the works was in line with what was agreed upon. (See recommendation 1.2.7, section 1.2, chapter III of this report).

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

With respect to the results in this field, the Republic of Bolivia provided³⁸ information on the contracting procedures executed as of October 5, 2006, and on the entities that forward information to the SICOES on the contracts entered into during that same period. In addition, based on the classifiers section at the SICOES website, the Committee takes note of the following information:

Report by Modality of Contracting
Period: November 10, 2004 to November 10, 2006

Modality	Begun	%	Amount (Bs.)	%
Consulting Services Contract				
▪ Contract for Individual Consultants	5,825	18.29	101,962,122	0.90
▪ Minor Procurement from Consulting Firms	1,445	4.53	48,727,135	0.43
▪ Procurement by Competitive Bidding	987	3.10	424,004,687	3.74
Subtotal	8,257	25.92	574,693,944	5.07
Procurement of Works, Goods, and General Services				
▪ Minor Procurement by Comparative Pricing	17,021	53.44	800,650,812	7.06
▪ Procurement by Exception	560	1.76	554,825,396	4.90
▪ Procurement by Public Invitation	369	1.16	41,098,871	0.36
▪ Procurement by Public Bidding	5,645	17.72	9,366,815,226	82.61
Subtotal	23,595	74.08	10,763,390,305	94.93
TOTAL	31,852	100.00	11,338,084,249	100.00

Based on the foregoing information, it can be deduced that Bolivia, during the period indicated, entered into a total of 31,852 public procurement procedures, 8,257 of which (25.92%) correspond to procurement of consulting services, and 23,595 (74.08%) to procurement of works, goods, and general services. With respect to this last category, it is noted that the modalities of procurement by public bidding and minor procurement by comparative pricing are the general rule for procurement procedures during that period; it was highlighted that only 1.76% of all procurement operations were by the exceptional procedure.

As for the amounts awarded, the Committee observes that 82.61% was awarded through public biddings, whereas 4.9% was awarded on an exceptional basis. Nonetheless, the amounts awarded by this means are greater than the amounts corresponding to minor procurement by comparative pricing, thus one should reiterate the considerations offered at section 1.2.2 above on the advisability of developing the grounds for exceptions provided for at Article 33 of the consolidated text of Supreme Decree No. 27328 and Article 71 of the Regulation that guarantees that the use of this modality should result from their strict application. (See recommendation 1.2.1(a), section 1.2, chapter III of this report).

³⁸ Response of the Republic of Bolivia to the questionnaire, pp. 13 and 14.

With respect to the sanctions imposed on contractors, the Republic of Bolivia notes³⁹ in its response that “*sanctions are not applied to contractors, because there is no entity with such powers,*” accordingly the Committee reiterates the observations made in the previous section on strengthening the control mechanisms, developing and implementing a regime of sanctions for contractors who breach the principles and duties in respect of public procurement (see recommendation 1.2.3(a), section 1.2, chapter III of this report), taking into account, moreover, that the State itself says⁴⁰ that to strengthen its procurement system, it has provided for the adoption of a new law or regulation that would include establishing a registry of qualified suppliers and a regulatory organ that imposes administrative sanctions on both bidders and public servants, among other aspects.

Just as NB-SAP provides with respect to the SAP, Article 5 of the consolidated text of Supreme Decree No. 27328 provides that all public entities should draw up their Specific Regulation of the SABS. Nonetheless, based on the information published at the SICOES website, of the 760 government entities, approximately 44% (334) have not fulfilled this obligation. Consequently, and mindful of the importance of having that regulation, the Committee invites Bolivia to promote its adoption in those entities that still do not have it. (See recommendation 1.2.8., section 1.2, chapter III of this report).

Finally, and given that the legal framework in place in this respect is relatively recent, the Committee urges the Republic of Bolivia to consider performing periodic comprehensive evaluations that make it possible to value the use and effectiveness of the system for procurement of goods and services, and, based on its results, define and adopt those measures deemed appropriate to ensure the system’s transparency, publicity, equity, and efficiency. (See recommendation 1.2.9., section 1.2, chapter III of this report).

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

2.1. Existence of provisions in the legal framework and/or other measures

The Republic of Bolivia has a set of provisions and measures related to the above-mentioned systems, among which the following should be noted:

- Organic Law No. 2175 of the Public Ministry, Article 15 of which provides that “*The Public Ministry will protect the people, who to collaborate with the justice administration, are in danger to suffer some damage. This protection will offer in special, when it is tie crimes to the organized criminality, the abuse authority or the violation of human rights. To this end, it will have a permanent program of protection to witnesses, victims and to its own civil employees.*”

Also, the State under review indicates that through its Vice-ministry of Transparency and Fight against Corruption of the Ministry of Justice, it works in the elaboration of legislative proposals on this subject, aside from the draft Law Marcelo Quiroga Santa Cruz which contemplates provisions on this matter.

³⁹ *Id.* p. 14.

⁴⁰ *Id.* p. 15.

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

With respect to the provisions for protecting public servants and private citizens who in good faith report acts of corruption, the Committee notes that, on the basis of the information available to it, they may be said to constitute a set of measures that are relevant for promoting the purposes of the Convention.

The Committee, nevertheless, considers that it would be pertinent for the Republic of Bolivia to consider adopting, through the appropriate authority, comprehensive regulations on protection of public servants and private citizens who in good faith report acts of corruption, in accordance with the fundamental principles of its domestic system of laws (See Recommendation in Section 2 of Chapter III of this report).

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

The Republic of Bolivia does not have information on the results in this topic. The Committee will make a recommendation in this regard. (See General Recommendation 4.2 in Chapter III of this report).

3. ACTS OF CORRUPTION (ARTICLE VI(1) OF THE CONVENTION)

3.1. Existence of provisions in the legal framework and/or other measures

The Republic of Bolivia has a set of provisions on the definition of acts of corruption provided for at Article VI(1) of the Convention, among which the following should be pointed out:

▪ With regard to Article VI(1)(a) of the Convention:

- Article 145 (bribery of a government official [*cohecho pasivo propio*]) of the Criminal Code⁴¹ which states: “A public servant or authority^{xx} who in order to perform or cease to perform an act relating to his or her functions or contrary to the duties of his or her post receives directly or by means through another person, for himself or herself or a third person, gifts or any other advantage or accepts offers or promises shall be sanctioned by imprisonment of two to six years and a fine of 130 days (salary).”

- Article 147 (benefits by reason of one’s position [*beneficios en razón del cargo*]) of the Criminal Code, which states: “A public servant or authority who in consideration of his or her position accepts gifts or other benefits shall be sanctioned by one to three years imprisonment, and a fine of 60 to 200 days (salary).”

- Article 150 (negotiations incompatible with the performance of public functions) of the Criminal Code, which states: “A public servant who by himself or herself or by means of another person or by simulated act were to take interest in and obtain for himself or herself or for a third person, an illicit benefit in any contract, supply, auction, or operation in which he or she is involved by reason of his or her position shall be subject to deprivation of liberty for one to three years, and a fine of 30 to 500 days (salary).”

⁴¹ Available at: www.oas.org/Juridico/mla/sp/bol/sp_bol-int-text-cp.html

This provision is applicable to arbitrators, expert witnesses, auditors, accountants, auctioneers, and all other professionals with respect to the acts in which, by reason of their trade, they may intervene, and guardians, tutors, curators, executors, and special internal auditors (síncicos) with respect to the property belonging to their minor orphaned children, wards, bequests, bankruptcies, liquidations, and similar acts.”

- Article 151 (extortion by a public official or judge [*concusión*]) of the Criminal Code, which states: “*A public servant or authority who, abusing his or her status or functions, directly or indirectly were to demand or obtain money or any other unlawful benefit greater than the amount legally set, in benefit of oneself or a third person, shall be punished by imprisonment for two to five years.*”

- Article 152 (extortion [*exacciones*]) of the Criminal Code, which states: “*A public servant who demands or obtains the extortion expressed in the previous article to convert it to the benefit of the public administration shall be punished by imprisonment of one month to two years.*”

- Article 173 bis (bribery of a judge [*cohecho pasivo del juez*]) of the Criminal Code, which states: “*A judge who accepts a promise or gift to rule, delay, or fail to issue a resolution or decision on a matter submitted to his or her jurisdiction shall be punished by imprisonment of three to eight years and a fine of 200 to 500 days (salary).*”

▪ With regard to Article VI(1)(b) of the Convention:

- Article 158 (bribery of government official [*cohecho activo*]) of the Criminal Code, which states: “*One who directly or through another person gives or promises a public servant or authority gifts or any other benefit, to do or cease to do something with respect to his or her functions, shall be sanctioned by the penalty of Article 145, diminished by one-third.*

A private person who may have acceded at some time to the request for a gift or benefit required by an authority or public servant and who reports the fact to the competent authority before the opening of the corresponding criminal procedure shall be exempt from punishment.”

▪ With regard to Article VI(1)(c) of the Convention:

- Article 142 (embezzlement of public funds [*peculado*]) of the Criminal Code, which states: “*A public servant who, taking advantage of the position he or she holds, appropriates money, securities, or assets whose administration, collection, or custody are entrusted to him or her, shall be punished by deprivation of liberty of three to eight years and a fine of 60 to 120 days (salary).*”

- Article 143 (negligent embezzlement of public funds [*peculado culposo*]) of the Criminal Code, which states: “*A public servant who negligently allows the commission of said offense shall be punished by labor of one month to one year and a fine of 20 to 50 days (salary).*”

- Article 146 (improper use of influence [*uso indebido de influencias*]) of the Criminal Code, which states: “*A public servant or authority who, directly or through another person and taking advantage of his or her functions or making improper use of the influences that stem therefrom, obtains advantages or benefits, for himself or herself or a third person, shall be punished by imprisonment of two to eight years and a fine of 100 to 500 days (salary).*”

- Article 174 (association [*consorcio*] of judges and attorneys) of the Criminal Code, which states: “*A judge who orchestrates the formation of associations with one or several attorneys, or is part of*

them, for the purpose of obtaining illicit economic advantages, to the detriment of the sound administration of justice, shall be punished by imprisonment of two to four years.

The identical sanction shall be imposed on the attorney or attorneys who, with the same aim and effect, orchestrate such associations with one or several judges, or might be part of them.”

▪ With regard to Article VI(1)(d) of the Convention:

- Article 144 (embezzlement [*malversación*]) of the Criminal Code, which states: “A public servant who were to apply the funds he or she administers, receives, or has in custody, in a manner other than that for which they are earmarked, shall be subject to imprisonment of one month to one year or a fine of 20 to 240 days (salary).”

- Article 172 (concealment [*receptación*]) of the Criminal Code, which states: “One who, after a crime has been committed, helps someone secure the benefit or result of it or knowingly receives, hides, sells, or purchases the instruments that were used to commit the crime or the things obtained by criminal means shall be punished by imprisonment of six months to two years.

One who aids and abets one’s ascendants, descendants, or spouse shall be exempt from the penalty.”

▪ With regard to Article VI(1)(e) of the Convention:

- Article 8 (criminal attempt [*tentativa*]) of the Criminal Code, which states: “One who by suitable or unequivocal acts begins to commit an offense and does not consummate it for causes beyond his or her control shall be punished with two-third the penalty established for the consummated offense.”

- Article 20 (perpetrators [*autores*]) of the Criminal Code, which states: “Perpetrators are those who perform the act alone, jointly, by means of another person, or those who intentionally provide cooperation without which the intentional illegal act could not have been committed.

A mediate perpetrator is one who intentionally serves as the instrument of another for performing the offense.”

- Article 22 (instigator [*instigador*]) of the Criminal Code, which states: “One who intentionally gets another to commit an intentional illegal act is an instigator. He or she shall be punished by the penalty provided for the perpetrator of the offense.”

- Article 23 (complicity [*complicidad*]) of the Criminal Code, which states: “One who intentionally facilitates or cooperates in the performance of an intentional illegal act, such that even without that assistance the offense would have been committed, is an accomplice; and one who by virtue of prior promises, provides assistance or help after the fact, is also an accomplice. He or she shall be punished by the penalty provided for the offense, attenuated pursuant to Article 39.”

- Article 132 (criminal association [*asociación delictuosa*]) of the Criminal Code, which states: “One who forms part of an association of four or more persons that has as its purpose committing crimes, shall be punished by six months to two years in prison, or one month to one year of labor.

The same penalty will apply to one who forms part of youth gangs for the purpose of provoking disorder, outrages, defamation, or any other offense.”

- Article 171 (aiding and abetting [*encubrimiento*]) of the Criminal Code, which states: “*One who after having committed an offense, without a prior promise, helps someone evade the action of the justice system or fails to report the act when under an obligation to do so, shall be subject to imprisonment for six months to two years.*”

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

With respect to the provisions on the definition of the acts of corruption provided for at Article VI(1) of the Convention, which the Committee has examined based on the information that has been available to it, including the study done in the context of the technical cooperation project for ratifying and implementing the Convention, executed by the OAS with the financial support of the Inter-American Development Bank (IDB) and the participation of the Universidad Católica Boliviana^{xxi}, one can note that they constitute a set of relevant measures for promoting the purposes of the Convention.

Nonetheless, the Committee urges the Republic of Bolivia to adapt and/or expand, as appropriate, its criminal legislation, in order to include the elements of those acts of corruption set out in Article VI.1 of the Convention. (See recommendation 3.1., section 3, chapter III of this report).

The Committee is also concerned by the wording of the second paragraph of Article 172 of the Criminal Code, which is related to paragraph (d) of Article VI.1 of the Convention, and it encourages the Republic of Bolivia to consider the possibility of repealing the part of the provision that exempts those who aid and abet their ascendants, descendants, or spouse from punishment. (See recommendation 3.2., section 3, chapter III of this report).

Finally, the Committee believes that Article 132 of the Criminal Code, which is related to paragraph (e) of Article VI.1 of the Convention, could be amended to require a minimum of two people for commission of the crime of criminal association. (See recommendation 3.3., section 3, chapter III of this report).

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

Bolivia provided information about the execution of the Comprehensive Anticorruption Plan (*Plan Integral Anticorrupción*, PIA), whose general purpose is to work in coordinated fashion to improve the processes of prevention, detection, investigation, indictment, prosecution, and punishment of acts of corruption. Nonetheless, it indicated that the Judicial branch still did not have data on the cases processed and resolved for committing such acts.⁴² In this regard, and in consideration of the fact that there is no information additional to the foregoing information, the Committee will make a recommendation in this respect. (See recommendation 3.4, section 3, chapter III of this report).

III. CONCLUSIONS AND RECOMMENDATIONS IN RELATION TO THE IMPLEMENTATION OF THE PROVISIONS SELECTED IN THE FRAMEWORK OF THE SECOND ROUND

Based on the review in Chapter II of this report, the Committee offers the following conclusions and recommendations regarding implementation by the Republic of Bolivia of the provisions contained in Article III(5) (systems of government hiring and procurement of goods and services); Article III(8) (systems for protecting public servants and private citizens who in good faith report acts of

⁴² Response of the Republic of Bolivia to the questionnaire, pp. 18 and 19.

corruption); and Article VI (acts of corruption) of the Convention, which were selected in the context of the second round.

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

1.1. Systems of government hiring

The Republic of Bolivia has considered and adopted certain measures intended to establish, maintain and strengthen, when applicable, systems of government hiring, as discussed in section 1.1 of Chapter II of this report.

In view of the comments made in that section, the Committee suggests that the Republic of Bolivia consider the following recommendations:

- 1.1.1. Strengthen the systems for hiring public servants. To carry out this recommendation, the Republic of Bolivia could take into account the following measures:
 - (a) To continue strengthening the provisions related to the stages of the processes of recruitment and selection of personnel for public service, by adopting the provisions and criteria that better define the announcements, their dissemination and requirements, as well as the holding and the terms and conditions for merit-based competitive hiring procedures and/or competitive examinations. (See section 1.1.2, chapter II of this report);
 - (b) Develop, through the corresponding procedures, the modality of recruitment by direct invitation of what are known as freely-appointed public servants based on the principles of merit, competence, equality, and transparency, ensuring its publicity, equity, and efficiency in hiring.(See section 1.1.2, chapter II of this report);
 - (c) Adopt, through the corresponding procedures, rules and mechanisms that regulate the hiring into the public administration of temporary personnel, and the provisions of specific or specialized services that ensure the reliable verification of the suitability, merits, competences, and labor attitudes appropriate for the performance of their functions. (See section 1.1.2, chapter II of this report);
 - (d) Promote, in keeping with the NB-SAP, the preparation and updating of the Specific Regulation of the System of Personnel Management in the public sector entities indicated in the SAFCO Law and in the EFP and, at the same time, grant the SNAP, as the lead agency of the system, the monitoring powers needed to verify adequate fulfillment of this obligation. (See section 1.1.2, chapter II of this report).
 - (e) See to it that the corresponding authority adopt provisions aimed at preventing and punishing nepotism in public service. (See section 1.1.2, chapter II of this report).
 - (f) Continue strengthening the lead agencies of the SAP, especially the National System of Personnel Management (SNAP) and the Superintendence of the Civil Service (SSC), in the functions they perform with respect to the administration and control of the systems for hiring public servants, endowing them with the resources needed for properly performing their functions and establishing mechanisms that make possible the institutional coordination

of their actions and an ongoing evaluation and monitoring of these. (See section 1.1.2, chapter II of this report).

- (g) Implement preliminary training programs and courses so that those who enter the public service know their duties of probity and the functions inherent to their position. (See section 1.1.2, chapter II of this report).

1.1.2. Strengthen the systems for contracting public servants in the Legislative branch. To carry out this recommendation, the Republic of Bolivia could take the following measure:

- Have the corresponding authority adopt clearer and more specific provisions that regulate the system for hiring public servants in the legislature based on the principles of merit and equality, including oversight mechanisms and lead authorities or administrators of the system; mechanisms for disseminating vacancies to be filled; as well as challenge remedies that seek to clarify, modify, or overturn substantive acts in selection processes. (See section 1.1.2, chapter II of this report).

1.1.3. Supplement the systems for hiring public servants in the Judicial branch. To carry out this recommendation, the Republic of Bolivia could take into account the following measure:

- Adopt, through the corresponding procedures, mechanisms that establish clearly defined criteria on the dissemination of job opportunities in the Judicial branch or the vacancies or positions to be filled, their content and form, as well as the lead time with which they must be published, it being possible to use the mass media, such as national circulation newspapers and/or websites. (See section 1.1.2, chapter II of this report).

1.1.4. Supplement the systems for hiring public servants in the Public Ministry. To carry out this recommendation, the Republic of Bolivia could take into account the following measure:

- Implement, by the corresponding authority and based on the principles of due process and legality, mechanisms for bringing challenges that seek to clarify, modify, or overturn substantive acts in the processes for selection of personnel in the Public Ministry. (See section 1.1.2, chapter II of this report).

1.1.5. The SSC should maintain the registry of information on the entry, evaluation, permanence, mobility, and retirement of career service staff, in coordination with the SNAP, in keeping with Article 61(e) of the EFP. (See section 1.1.3, chapter II of this report).

1.2. Government systems for the procurement of goods and services

The Republic of Bolivia has considered and adopted measures intended to establish, maintain and strengthen the systems for government procurement of goods and services, as discussed in Section 1.2 of Chapter II of this report.

In light of the comments made in that section, the Committee suggests that the Republic of Bolivia consider the following recommendations:

- 1.2.1. Strengthen the systems for government procurement of goods and services. To carry out this recommendation, the Republic of Bolivia could take into account the following measures:
 - (a) See to it that the corresponding authority develops the grounds for exceptions to the public bidding requirement provided for at Article 33 of the consolidated text of Supreme Decree No. 27328 and Article 71 of the Regulation (Ministerial Resolution No. 760) for the purpose of impeding its improper and/or discretionary use. (See section 1.2.2, chapter II of this report).
 - (b) See to it that the corresponding authority establishes the parameters that enable public entities to set, in their specific regulations, the objective amounts for being able to proceed with the modality of direct procurement. (See section 1.2.2, chapter II of this report).
- 1.2.2. Continue strengthening the lead agency of the SABS, especially its General Bureau of Governmental Administration Systems of the Vice-Ministry of Budget and Accounting as regards the activities for administration and control of the system, endowing it with the resources needed to adequately perform its functions. (See section 1.2.2, chapter II of this report).
- 1.2.3. Strengthen the mechanisms of control in the processes of procuring goods, works, general services, and consulting services. To carry out this recommendation, the Republic of Bolivia could take into account the following measures:
 - (a) Develop and implement a sanctions regime for contractors and public servants who breach or violate the principles and provisions of the consolidated text of Supreme Decree No. 27328 and its Regulation. (See section 1.2.2, chapter II of this report).
 - (b) Adopt, through the corresponding authority, provisions that provide for the selection of an entity that carries out work of intervention, control, and oversight in contracts of a certain amount or complexity that so require. (See section 1.2.2, chapter II of this report).
 - (c) Encourage the creation of citizen review mechanisms to perform oversight and monitoring of the pre-contractual phase, and of the execution of those contracts which, based on their nature, importance, and/or magnitude, so require. (See section 1.2.2 of chapter II of this report).
- 1.2.4. Implement, through the corresponding entities of the leading agency of the SABS, the Public Registry of Suppliers provided for at Article 4 of the consolidated text of Supreme Decree No. 27328, it being possible to use computer technology to set it up, update it, and consult it. (See section 1.2.2, chapter II of this report).
- 1.2.5. Continue strengthening the electronic media and information systems for government procurement. To carry out this recommendation, the Republic of Bolivia could consider the following measures:
 - (a) Adopt the special regulation for electronic procurement provided for at Article 34 of the consolidated text of Supreme Decree No. 27328, centralizing as far as possible the public dissemination of government procurement and observing the principles of publicity, equity, and efficiency provided for in the Convention and facilitating the best conditions for the commercial operations of the State. (See section 1.2.2, chapter II of this report).

(b) Continue developing and strengthening the SICOES, especially its website www.sicoes.gov.bo, for the purpose of ensuring transparency, publicity, equity, and efficiency in the government systems for procurement of goods and services provided for in the Convention. (See section 1.2.2, chapter II of this report).

1.2.6. Study the possibility of publishing, when appropriate, pre-bidding terms and conditions so that interested parties can find out about them and submit comments thereon. (See section 1.2.2, chapter II of this report).

1.2.7. Strengthen systems for the procurement of public works. To carry out this recommendation, the Republic of Bolivia could take into account the following measure:

- Consider implementing control systems for each public works contract in particular which, mindful of its magnitude, provides for the performance of intervention tasks or direct supervision of execution of the contract by the contracting entity or whoever it designates; make it possible to have civic oversight mechanisms or citizen review activities; impose the duty of periodically rendering accounts on the performance of the contract; and that make it possible to determine whether the cost-benefit relationship anticipated was actually attained and whether the quality of the works was in line with what was agreed upon. (See section 1.2.2, chapter II of this report).

1.2.8. Promote, in keeping with Article 5 of the consolidated text of Supreme Decree No. 27328, the preparation of the Specific Regulation of the System for the Administration of Goods and Services in the public sector entities that have failed to fulfill this obligation. (See section 1.2.3, chapter II of this report).

1.2.9. Perform periodic comprehensive evaluations that make it possible to assess the use and effectiveness of the system for procurement of goods and services, and, based on its results, define and consider adopting specific measures that make it possible to ensure transparency, publicity, equity, and efficiency. (See section 1.2.3, chapter III of this report).

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

The Republic of Bolivia is in the process of adopting measures intended to establish, maintain and strengthen systems for protecting public servants and private citizens who, in good faith, report acts of corruption, as discussed in Section 3 of Chapter II of this report.

In view of the comments made in that section, the Committee suggests that the Republic of Bolivia consider implementing systems to protect public servants and private citizens who, in good faith, report acts of corruption. To carry out this recommendation, the Republic of Bolivia could take into account the following measure:

- Adopt, through the corresponding authority and taking into account the existing legal initiative, a comprehensive regulation on protection of public servants and private citizens who, in good faith, report acts of corruption, including protecting their identity, in keeping with the Constitution and the

fundamental principles of the domestic legal order, which could include, among others, the following aspects:

- (a) Protection for those who report acts of corruption who may be subject to administrative or judicial investigation;
- (b) Measures of protection, aimed not only at the physical integrity of the whistleblower and his or her family, but also at protection of their employment situation, especially in the case of a public servant and when the acts of corruption may involve his or her superior or colleagues;
- (c) Reporting mechanisms, such as reporting with protection of one's identity, so as to guarantee the personal safety and confidentiality of identity of public servants and private citizens who, in good faith, report acts of corruption;
- (d) Mechanisms for reporting threats or reprisals to which a whistleblower may be subjected, indicating the authorities competent to process requests for protection and the mechanisms responsible for providing it;
- (e) Mechanisms for protecting witnesses that give them the same guarantees as public servants and private persons;
- (f) Mechanisms that facilitate, when appropriate, international cooperation on the foregoing matters, including the technical assistance and reciprocal cooperation described in the Convention, along with exchanges of experiences, training, and mutual assistance;
- (g) A simplified whistleblower protection application process.
- (h) Provisions to punish noncompliance with protection rules and/or obligations;
- (i) The competence of the judicial and administrative authorities in this area, clearly distinguishing one from the other.

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

The Republic of Bolivia has adopted measures aimed at defining as criminal offenses the acts of corruption provided for by Article VI(1) of the Convention, as described in section 3.1 of Chapter II of this report.

In view of the comments made in that section, the Committee suggests that the Republic of Bolivia consider the following recommendations:

- 3.1. Adapt and/or expand, as appropriate, its criminal legislation, in order to include the elements of those acts of corruption set out in Article VI.1 of the Convention. (See section 3.2., chapter II of this report).
- 3.2. Repeal the second paragraph of Article 172 of the Criminal Code, which exempts those who aid and abet their ascendants, descendants, or spouse from punishment. (See section 3.2., chapter II of this report).

- 3.3 Amend Article 132 of the Criminal Code to require a minimum of two people for commission of the crime of criminal association. (See section 3.2, chapter II of this report).

4. GENERAL RECOMMENDATIONS

Based on the analysis and contributions made throughout this report, the Committee suggests that the Republic of Bolivia consider the following recommendations:

- 4.1. To continue designing and implementing, when appropriate, training programs for public servants responsible for managing and implementing the systems, standards, measures and mechanisms considered in this report, for the purpose of guaranteeing that they are adequately understood, managed and implemented.
- 4.2. Select and develop procedures and indicators, when appropriate and where they do not presently exist, to analyze the results of the systems, standards, measures and mechanisms considered in this report, and to follow-up on the recommendations made herein. (See Chapter II, Sections 1.1.3 and 1.2.3).

5. FOLLOW-UP

The Committee will consider the periodic update Reports submitted by the Republic of Bolivia on their progress in implementing previous recommendations, within the framework of the plenary meetings of the Committee and in accordance with Article 31 of the Rules of Procedure and Other Provisions.

Similarly, the Committee will review the progress of the Republic of Bolivia in implementing the recommendations made in this Report, in accordance with Article 29 of the Rules of Procedure and Other Provisions.

IV. OBSERVATIONS IN RELATION TO THE PROGRESS IN THE IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED IN THE REPORT FROM THE FIRST ROUND

Based on the information made available to the Committee on the implementation of the recommendations formulated for the Republic of Bolivia in the Report in the First Round of Review, the Committee observes the following:

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

- Recommendation:

“Strengthen the implementation of laws and regulatory systems concerning conflicts of interest.”

- Measures suggested by the Committee:

a) *Complement the existing rules, regulating, as appropriate, certain eventualities that could*

constitute conflicts of interest and which, in view of their importance, should receive more detailed and specific treatment.

- b) Subject to compatibility with the constitutional right of the individual to freedom of work, to examine the improvement and strengthening of appropriate and relevant restrictions for those who leave public sector employment and of measures to enforce them.*
- c) Through the competent authority, set a time period for public entities, pursuant to the law, to adopt their Codes of Ethics and implement mechanisms that guarantee a practical evaluation of the provisions of those Codes, including those related to preventing conflicts of interest, such that the results contribute to their development, strengthening and effective application.*
- d) Adopt, through the appropriate statutory or administrative act, minimum content standards or requirements for the Codes of Ethics that make it possible to adequately develop the aspects essential for attaining their objectives, which include those related to preventing conflicts of interest.*
- e) Adopt, through the appropriate statutory or administrative act, guidelines to give direction to the public entities in carrying out the obligation to establish mechanisms that ensure a practical evaluation of the Codes of Ethics provisions, including those related to preventing conflicts of interest, such that their results contribute to their development, strengthening and effective application.*

In its response,⁴³ Bolivia presents information with respect to the foregoing recommendation, of which the Committee highlights, as steps that help advance its implementation, the measures taken in relation to:

- The drafting of the “Marcelo Quiroga Santa Cruz” Law or Law “of Struggle against Corruption and Legitimizing Illicit Earnings,” whose adoption is pending in the National Congress.
- The development of a Program of Ethics in Public Service implemented by the SSC.

In addition with respect to the implementation of measures in the foregoing recommendation, the document sent by the non-governmental organization “Por Bolivia” states, in relation to measure (a): *“This work has been developed in a very limited way, including in a Supreme Decree a provision that limits the possibility of a public servant from working for an organization with which he or she had a direct relationship in the performance of his or her functions. Beyond this, nothing has been developed in the specific provisions or in provisions supplemental to those that exist on this matter”*; in relation to measure (b): *“The already-mentioned provision exists, and it is general, does not provide for exceptions, and is hard to enforce because there are no mechanisms for monitoring compliance; even though this situation is criminalized, there have been no reports, even in situations that have been public no actions have been taken against these sorts of attitudes, which have represented serious harm to the interests of the Bolivian State”*; in relation to measure (c): *“While no time has been set, a pilot effort is under way that involves more than 4,000 public servants and nine representative entities for implementing a structured model for promoting public ethics in which the Code of Ethics is one element in a process that involves elements of administration and monitoring its implementation. This effort is being undertaken by the Superintendency of the Civil Service”*; as regards measure (d): *“This task is being assumed by the Superintendency of the Civil Service, to*

⁴³ Response of the Republic of Bolivia to the questionnaire, p. 22.

identify a novel methodology with broad potential can have a positive impact in the area of promotion of conduct in the public sector;” and in relation to measure (e): “This result is provided for in the design of a system for promoting ethics in the public service that is under way based on a pilot program implemented by the Superintendency of the Civil Service.”⁴⁴

In this respect, the Committee takes note of the need for Bolivia to give additional attention to implementing the recommendation transcribed above. In addition, the Committee takes note of the difficulties⁴⁵ observed in the process of implementing this recommendation that have been mentioned by Bolivia, regarding the social and political changes that interrupted the measures that had been adopted.

Finally, the Republic of Bolivia states, in its response, that it “*requires technical support for designing plans and programs for evaluating the adoption and observance of the Codes of Ethics in the public entities, as tools for preventing corruption.*”⁴⁶

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

▪ Recommendation:

“Strengthen the implementation of statutes and regulatory systems with respect to control over the resources of the public administration.”

▪ Measures suggested by the Committee:

- a) *Set, by means of the competent authority, a period for the public entities, in complying with the law, to adopt their Codes of Ethics and implement mechanisms that assure the practical evaluation of the provisions in those Codes, including those related to the preservation of public resources, such that their results contribute to their development, strengthening and effective application.*
- b) *Adopt, through the appropriate statutory or administrative act, minimum content standards or requirements for the Codes of Ethics that make it possible to achieve adequate development of the aspects essential to the attainment of their objectives, including those related to the preservation of public resources.*
- c) *Adopt, through the appropriate statutory or administrative act, guidelines that give direction to the public entities in complying with the obligation to implement mechanisms that ensure the practical evaluation of the Codes of Ethics provisions, among them those related to the preservation of public resources, such that their results contribute to their development, strengthening and effective application.*

⁴⁴ Document presented by the non-governmental organization *Por Bolivia-Centro de Desarrollo de Éticas Aplicadas y Promoción del Capital Social*, by way of Transparency International, pp. 26 and 27. Available at: http://www.oas.org/juridico/spanish/mesicic2_blv_inf_sc_sp.pdf

⁴⁵ Response of the Republic of Bolivia to the questionnaire, p. 23.

⁴⁶ *Id.*

- d) *Perform an evaluation of the use and effectiveness of the standards of conduct for ensuring the preservation and adequate use of public resources and of the mechanisms for compliance with them in Bolivia, as instruments for preventing corruption, and as a result of that evaluation, consider adopting measures to promote, facilitate and consolidate or ensure their effectiveness for that purpose.*

In its response⁴⁷, Bolivia presents information with respect to the foregoing recommendation, of which the Committee notes, as steps that help advance its implementation, the measures taken by the SSC to implement the Program of Ethics in Public Service which, among other aspects, provides for the adequate use of the resources entrusted to public servants.

In addition, with respect to implementing the measures of the foregoing recommendation, the document sent by the non-governmental organization “Por Bolivia” states, with respect to measure (a): *“There is a specific Code of Ethics for the function of procurement and administration of state assets elevated to the rank of a Supreme Decree; nonetheless, implementation actions ensuring effective compliance have yet to be taken. In the scope of the program for promoting ethics in public service, of the Superintendency of Civil Service, it is a topic currently being debated, and consideration has been given as to what steps should be taken to ensure its effective implementation from a preventive perspective”*; as regards measure (b): *“The specific Code of Ethics for the area has them, in the institutional Codes of Ethics the issue is present, and there are plans to include it in the disciplinary regimes”*; as regards measure (c): *“This is a result considered in the context of the pilot program being implemented by the Superintendency of the Civil Service”*; and in relation to measure (d): *“This activity has not been implemented, in terms of the disciplinary regimes or implementation of the provisions in force; the programs associated with ethics have a sustainability component that includes measuring impact.”*⁴⁸

In this respect, the committee takes note of the need for Bolivia to pay additional attention to implementing the foregoing recommendation. In addition, the Committee takes note of the difficulties⁴⁹ observed in the process of implementing this recommendation, as explained by Bolivia, in relation to the social and political changes that interrupted the measures that have been adopted.

Finally, the Republic of Bolivia states in its response that *“it needs technical support to design plans and programs that make it possible to evaluate the adoption and observance of the Codes of Ethics in the public entities, as instruments for preventing corruption.”*⁵⁰

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

▪ Recommendation:

“Strengthen the Republic of Bolivia’s mechanisms for requiring public officials to report to the competent authorities any acts of corruption in government service that come to their attention.”

⁴⁷ *Id.*

⁴⁸ Document presented by the non-governmental organization Por Bolivia, p. 27.

⁴⁹ Response of the Republic of Bolivia to the questionnaire, p. 24.

⁵⁰ *Id.*

▪ Measures suggested by the Committee:

- a) *Include among the duties established in Law 2027 of 1999, the Statute on Public Officials, or in the Codes of Ethics adopted by the public entities in compliance with Article 13 of that law, the obligation to report any violation of its provisions and those of the Codes.*
- b) *Facilitate compliance with the duty to report acts of corruption, through such steps as are considered appropriate; and adopt and implement protection measures for whistleblowers, so that they receive guarantees vis-à-vis threats or retaliation to which they may be subjected as a result of compliance with this obligation.*
- c) *Train public officials as to the existence and purpose of the responsibility to report to the competent authorities acts of corruption in the public administration that come to their attention.*
- d) *Implement a system of protection that includes protection of identity, for public officials, who in good faith report acts of corruption.*
- e) *Implement adequate procedures to foster the reporting of such acts.*
- f) *Consider the possibility, once the necessary procedures have been carried out, of the adoption by the competent authority, of the Proposed Law to Protect Persons who Report acts of Corruption in the performance of Public Functions mentioned in Chapter II, section 1.3.2 of this Report.*

In its response⁵¹, Bolivia states as follows: “*Bolivia, for the motives stated in item 1.1.1, did not include or incorporate legal measures for establishing as a duty in Law No. 2027, the Law on the Statute on Public Officials, the obligation to report any act of corruption.*”

In addition, with respect to implementation of the measures of the foregoing recommendation, the document sent by the non-governmental organization “Por Bolivia” states, with respect to measure (a), that: “*The change in Law 2027, in the area of the Codes of Ethics that are currently being developed in the entities under 28 participatory mechanisms, has not been implemented; it is known that these issues are current and are included*”; in relation to measure (b): “*No activities whatsoever have been developed in this regard; the “Marcelo Quiroga” draft legislation may fill this gap, nonetheless, this issue has not been tackled effectively*”; as regards measure (c): “*Permanent efforts have been under way and are under way to disseminate the SAFCO Law and its systems in addition to the provisions on liability in public service, nonetheless, this has not had an effect in the area of reporting. No specific activities have been undertaken in this area*”; as regards measures (d) and (e): “*To date it does not exist, it’s an element considered within the program for promoting ethics in public service fostered by the Superintendency of the Civil Service*”; and in relation to measure (f): “*That draft legislation was never made known, there is an initiative in place in civil society called the Bell Law (Ley Campana) that has not gone further than a few seminars. There are no such provisions, nor any short-term prospect that they would be made effective.*”⁵²

In this respect, the Committee takes note of the need for Bolivia to pay additional attention to implementing the recommendation transcribed above. In addition, the Committee takes note of the

⁵¹ *Id.*

⁵² Document presented by the non-governmental organization Por Bolivia, pp. 27 and 28.

difficulties⁵³ observed in the process of implementing this recommendation, noted by Bolivia, in relation to the social and political changes that interrupted the measures that had been taken.

Finally, the Republic of Bolivia indicates in its response that “*it does not have experience in the use of communications media for public officials or public servants for reporting acts of corruption in government.*”⁵⁴

2. SYSTEMS FOR REGISTRATION OF INCOME, ASSETS, AND LIABILITIES (ARTICLE III, PARAGRAPH 4, OF THE CONVENTION)

▪ Recommendation:

“*Strengthen the systems for registration of income, assets and liabilities.*”

▪ Measures suggested by the Committee:

- a) *Strengthen the provisions with respect to verifying the content of the Sworn Declarations on Assets and Income by the Office of the Comptroller-General of the Republic, established in Supreme Decree No. 27349 of 2004, such that there can be systems that make it possible to give impetus to and timely carry out such verification (see Chapter II, section 2.2 of this Report).*
- b) *Examine the advisability of the Office of the Comptroller-General of the Republic, as the agency responsible for verifying Sworn Statements on Assets and Income, carrying out a periodic review of those Statements, even though this may not include all of them. For example, acting on its own initiative, it could select a random number of declarations to be reviewed each year, in order to exercise effective control as its mandate provides.*
- c) *Classify illicit enrichment as a crime, given that it is closely related to this issue.*
- d) *Adopt the pertinent measures to ensure that public servants who, according to the Law on External Control called “Procedure for Notification of Incorporations and Resignations of Public Servants for the Control of the DJBR” (CE/17) are under an obligation to do so, to provide the information requested by the control mechanism in that law, in the time periods established therein.*
- e) *Optimize the systems for analyzing the content of the Sworn Declarations of Assets and Income, and adopt the appropriate measures, such that those declarations can be a useful tool for detecting and preventing conflicts of interest, as well as for detecting possible cases of illicit enrichment, once it has been classified as a crime.*
- f) *Increase the number of officials whose Declaration must be made public, bearing in mind the category and/or the nature of their functions.*
- g) *Examine the possibility of declarations of assets and income covering not only the public official, but also his or her spouse, close relatives and third persons related to him or her.*

⁵³ Response of the Republic of Bolivia to the questionnaire, p. 25.

⁵⁴ *Id.*

In its response⁵⁵, Bolivia presents information with respect to the foregoing recommendations, of which the Committee notes, as steps helping to implement it, the measures taken in relation to:

- The System for Verifying the Sworn Statement of Assets and Income that will be implemented by the Office of the Comptroller-General of the Republic as of the 2007 fiscal year, pursuant to the provisions of Supreme Decree No. 28695.
- The second version of the Regulation on Oversight of the Sworn Statement of Assets and Income in the Public Entities (GDBR/CI-546/06 RICE-17), adopted in March 2005 to replace the Norm of External Control called "Procedure for Notification of Incorporations and Resignations of Public Servants for the Control of the DJBR" (CE/17).

In addition, with respect to the implementation of the measures from the foregoing recommendation, the non-governmental organization "Por Bolivia" states, regarding measure (a): *"There has not been progress in this area, given that the process was considered by the previous anticorruption authority, which was completely dismantled. Some related tasks remain in the Office of the Comptroller-General, but the results are not yet evident"*; as regards measure (b): *"There is no known initiative in this regard, although the issue has been addressed and included in some plan of action that is now dismissed"*; as regards measure (c): *"To date this has not been done, nonetheless, the "Marcelo Quiroga" draft law considers this matter"*; as regards measure (d): *"The provision has yet to be effectively implemented, there is no reference to any effective action in this regard"*; as regards measure (e): *"Such efforts are not evident, at some point they were considered, but they have yet to be implemented"*; as regards measure (f): *"This work has not been concretized, while some efforts have been made to actively promote the filing of sworn statements and there are instruments, the evolution of the system is still lagging"*; and with respect to measure (g): *"No work has been done in this regard, there is no reference to studies or draft provisions that address this issue."*⁵⁶

The Committee takes note of the steps taken by Bolivia to advance in the implementation of the foregoing recommendation and of the need to pay additional attention to it.

3. OVERSIGHT BODIES FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 AND 11, OF THE CONVENTION)

▪ Recommendation:

"Strengthen the high-level oversight organs, as regards the functions they carry out in relation to controlling effective compliance with the provisions in sections 1, 2, 4 and 11 of the Convention, to ensure the efficacy of such oversight, endowing them with the resources needed for the proper performance of their functions; seeking to ensure that they have greater political and social support to this end; and establishing mechanisms that make possible the institutional coordination of their actions and an ongoing evaluation and monitoring of them."

In its response⁵⁷, Bolivia presents information with respect to the foregoing recommendation, of which the Committee notes, as steps that help towards implementation of it, the measures taken with respect to the financial, social and political support the State has given its high-level oversight organs.

⁵⁵ *Id.*

⁵⁶ Document submitted by the non-governmental organization Por Bolivia, pp. 28 and 29.

⁵⁷ Response of the Republic of Bolivia to the questionnaire, pp. 26 and 27.

In addition, with respect to the implementation of the foregoing recommendation, the non-governmental organization “Por Bolivia” states as follows: “*The work of strengthening these mechanisms and giving them more political and social support is not evident. It is possible to expect that under the circumstances of a new administration this may change, yet the uncertainty generated by the continuity in their posts of public servants gives rise to problems and weakens entities that were already weakened.*”⁵⁸

In this respect, the Committee takes note of the need for Bolivia to give special attention to implementing the recommendation transcribed above. In addition, the Committee takes note of the difficulties⁵⁹ observed in the process of implementing this recommendation, which was indicated by Bolivia, as regards the social and political problems the country faced in 2004.

4. MECHANISMS TO PROMOTE THE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11 OF THE CONVENTION)

4.1. General participation mechanisms

The Committee did not make any recommendations in this section.

4.2. Mechanisms for access to information

▪ Recommendation:

“*Strengthen the mechanisms for ensuring access to public information.*”

▪ Measures suggested by the Committee:

- a) *Develop and regulate processes for receiving applications, for responding to them in timely fashion and for appeals in the event that the requests are denied, and that establish sanctions in case of failure to provide information. In this regard, it is suggested that the country consider the possibility, once the necessary procedures have been carried out, of the adoption by the competent authority, of the bill on access to information mentioned in Chapter II, section 4.2.2, of this Report.*
- b) *Implement training and dissemination programs on the mechanisms for access to information, for the purpose of facilitating their understanding by public officials and citizens, and optimizing the use of available technology to that end.*
- c) *Measure, analyze, and evaluate the operation of the procedure for gaining access to public information, so as to ensure that the procedure is actually operational.*

In its response⁶⁰, Bolivia presents information with respect to the foregoing recommendation, of which the Committee notes, as steps contributing to its implementation, the measures taken with respect to:

⁵⁸ Document submitted by the non-governmental organization Por Bolivia, p. 29.

⁵⁹ Response of the Republic of Bolivia to the questionnaire, pp. 26 and 27.

⁶⁰ *Id.*, p. 27.

- The drafting and adoption by the Executive branch of proposed legislation on access to information, pending referral to the National Congress, to regulate, in more detail, aspects inherent to the exercise of this right and which, moreover, will make it possible to increase to the rank of statute the current Supreme Decree No. 26168 on Access to Public Information.
- The drafting of the preliminary draft Law on Transparency in Public Service that establishes as a duty of the State publicizing and disseminating information on its activities and functions in the institutional, administrative, and financial realms.

In addition, with respect to implementation of the in the foregoing recommendation, the non-governmental organization “Por Bolivia” states, with respect to measure (a): *“This has been sought to be done by implementing a Decree on Transparency that has given rise to many problems in its implementation, in general despite the existence of the provision, it does not meet with compliance by the institutions”*; as regards measure (b): *“Even though the Decree mentioned exists, major efforts have not been made to make it known and show how it operates”*; and with respect to measure (c): *“No activities have been held or mechanisms put in place in this regard.”*⁶¹

The Committee takes note of the steps taken by the State under review to move forward in implementing the foregoing recommendation, and the need for Bolivia to give additional attention to its implementation.

4.3. Mechanisms for consultation

- Recommendation:

“Complementing existing mechanisms of consultation, establishing procedures, when appropriate, so as to allow for making public consultations prior to designing public policies and prior to the final adoption of legal provisions.”

- Measure suggested by the Committee:

“Strengthen, as appropriate, procedures to make it possible to consult interested sectors in relation to the design of public policies and the drafting of proposed legislation, decrees or resolutions in the Executive branch.”

In its response⁶², Bolivia presents information on the foregoing recommendation, of which the Committee notes, as steps that contribute to its implementation, the measures taken with regard to the approval of Law No. 2769 on Referendum⁶³, which establishes the modalities of national, departmental, and municipal referenda; their execution; the legal nature of their results; the manner and conditions in which the citizenry can assume their initiative, and the control and administration of the process.

In addition, with respect to implementation of the measure in the foregoing recommendation, the non-governmental organization “Por Bolivia” states as follows: *“The Constitution includes the*

⁶¹ Document presented by the non-governmental organization Por Bolivia, pp. 29 and 30.

⁶² Response of the Republic of Bolivia to the questionnaire, p. 28.

⁶³ Available at: <http://www.constituyente.bo/documentos/Ley2769.pdf>

mechanism of referendum, which may be at the national, departmental, or municipal level; it has already been used and proven to be effective.”⁶⁴

The Committee takes note of the satisfactory consideration, by Bolivia, of the measure from the foregoing recommendation, which given its nature requires continuity.

4.4. Mechanisms to encourage participation in public administration

▪ Recommendation:

“Strengthen and continue implementing mechanisms that encourage civil society and non-governmental organizations to participate in the conduct of public affairs.”

▪ Measures suggested by the Committee:

- a) *Establish mechanisms, additional to the existing ones, to strengthen civil society and non-governmental organizations in their efforts to prevent corruption and develop public awareness as to the problem; and promote awareness of the mechanisms of participation established and how to use them.*
- b) *Regulate the functioning of the Citizen Legislative Initiative mechanism provided for in the Constitution, through the appropriate legal act, for the purposes of the citizenry being able to make effective use of it.*
- c) *Consider the possibility, as appropriate and in accordance with its body of domestic laws, of abolishing so-called desacato laws (see Chapter II, section 4.4.2 of this report).*
- d) *Periodically evaluate the development of the powers that have been accorded to the Citizen Anticorruption Networks mentioned in section 4.1.1. of this Report.*

In its response⁶⁵, Bolivia presents information on the foregoing recommendation, of which the Committee notes in particular, as steps that contribute to its implementation, the measures taken with respect to creating, via Supreme Decree No. 28695⁶⁶ of the National Anticorruption Council, made up, among others, of five representatives of civil society organizations who participate in the formulation of public policies embraced by the State.

In addition, with respect to implementation of the measures of the foregoing recommendation, the non-governmental organization “Por Bolivia” states, with respect to measure (a): *“There are several mechanisms for the active participation of civil society, in addition there are prospects for the implementation of some others that have not been concretized beyond intentions. The Program of Ethics in Public Service promoted by the SSC includes mechanisms in the form of citizen ethics committees that interact with the entities under a highly-constructive novel modality for following up on the implementation and sustainability of their programs. To this are added some mechanisms promoted by the current administration, which is displaying greater openness to such instruments, and to the participation of social organizations, even to the point of having meetings and mechanisms*

⁶⁴ Document submitted by the non-governmental organization Por Bolivia, p. 29.

⁶⁵ Response of the Republic of Bolivia to the questionnaire, p. 28.

⁶⁶ At this time Supreme Decree No. 28695 is before the courts in a challenge to its constitutionality, in a case brought by a representative of the citizen group PODEMOS.

which, while not formal, show that this interaction is viable”; in relation to measure (b): “This area of the Constitution has yet to be regulated”; as regards measure (c): “There is no evidence that work has been done in this respect”; and as regards measure (d): “These networks were not implemented in practice, at this time they have ceased to exist.”⁶⁷

The Committee takes note of the steps taken by Bolivia to implement the foregoing recommendation, and the need for it to continue giving it attention. In addition, the Committee takes note of the difficulties⁶⁸ observed in the process of implementing this recommendation, which has been noted by Bolivia, in terms of the social and political problems the country faced in 2004, which stood in the way addressing the issue of repealing the *desacato* statutes and the adoption of a statutory provision on citizen legislative initiative.

4.5. Mechanisms for participation in the follow-up of public administration

▪ Recommendation:

“Strengthen and continue implementing mechanisms that encourage civil society and non-governmental organizations to participate in the monitoring of the conduct of public affairs.”

▪ Measures suggested by the Committee:

- a) *Promote ways, when appropriate, for those who carry out public functions to allow, facilitate or help civil society and non-governmental organizations to develop activities to monitor their public performance.*
- b) *Design and start up programs for disseminating the mechanisms of participation for monitoring the conduct of public affairs, and, when appropriate, train in and facilitate the tools needed by civil society and non-governmental organizations to make adequate use of such mechanisms.*

In its response⁶⁹ Bolivia presents information on the foregoing recommendation, of which the Committee notes, as steps towards its implementation, the measures taken with respect to endowing the oversight committees of the 327 Bolivian municipalities with economic resources, by Supreme Decree No. 28500⁷⁰ of December 10, 2005.

In addition, with respect to the implementation of the measures indicated in the foregoing recommendation, the non-governmental organization “Por Bolivia” notes, with respect to measure (a): “This type of mechanism is being promoted at present given the government’s perspective, which seeks to actively involve civil society in the processes of monitoring its activities. Nonetheless, these

⁶⁷ Document submitted by the non-governmental organization Por Bolivia, p. 30.

⁶⁸ Response of the Republic of Bolivia to the questionnaire, p. 31.

⁶⁹ *Id.*

⁷⁰ By Supreme Decree No. 28704 of May 5, 2006, Supreme Decree No. 28500 was repealed, and the Ministry of the Presidency was instructed, through its Vice-Ministry for Decentralization, in coordination with the National Federation of Committees of Vigilance of Bolivia, to submit within 90 days a new regulation for the management of resources of the *Fondo de Control Social*, reached by consensus and with participation nationally. See:

www.enlared.org.bo/2005/agencia/Archivo/Archivo%20Descargue/DS_28966FCS%20final.doc

are still plans and intentions that are in the process of being carried out”; and with respect to measure (b): “In recent years no effective initiatives have been taken in this regard.”⁷¹

In this respect, the Committee takes note of the need for Bolivia to give special attention to implementing the recommendation indicated above.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)

▪ Recommendation 5.1

“Determine and prioritize specific areas in which the Republic of Bolivia considers that it needs the technical cooperation of other state parties to strengthen its capacity to prevent, detect, investigate and punish acts of corruption.

In addition, the Republic of Bolivia should determine and prioritize the requests for mutual assistance for investigating or judging cases of corruption..”

▪ Recommendation 5.2

“Continue the efforts to exchange technical cooperation with other state parties as to the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption.”

▪ Recommendation 5.3

“Design and implement a comprehensive program for dissemination and training for competent authorities and officials, for the purpose of them learning and being able to apply the mutual assistance provisions for investigating or prosecuting acts of corruption provided for in the Convention and in other treaties signed by the Republic of Bolivia.

It is also recommended that the competent officials be trained to attain broader mutual technical and legal cooperation to prevent, detect, investigate and punish acts of corruption.”

▪ Recommendation 5.4

“Measure, analyze and evaluate the results of the technical cooperation that Bolivia has obtained, so as to guarantee its effectiveness and efficiency, and to continue securing technical assistance from international organizations and cooperation agencies to fight corruption.”

In its response⁷² Bolivia presents information with respect to the foregoing recommendations.

In addition, with respect to their implementation, the non-governmental organization “Por Bolivia” notes, as regards recommendation 5.1: “There was a Comprehensive Anticorruption Plan, which has been dismissed under the previous administration; it had resources that were not executed and at present its status is unknown”; with respect to recommendation 5.2: “Some progress was made in the previous administrations, this issue has yet to be taken up by the current administration”; with respect to recommendation 5.3: “There is no evidence of activities in this regard”; and with respect to recommendation 5.4: “No actions have been taken in this regard, possibly because a large part of the

⁷¹ Document submitted by the non-governmental organization Por Bolivia, p. 31.

⁷² Response of the Republic of Bolivia to the questionnaire, pp. 32 and 33.

*cooperation included and planned was not executed due to the continuing changes in government, and finally by the uncertainty as to future policies in this area.”*⁷³

In this respect, the Committee takes note of the need for Bolivia to give additional attention to implementing the foregoing recommendations. In addition, the Committee takes note of the difficulties⁷⁴ observed in the process of implementing these recommendations that have been mentioned by Bolivia, as regards the financial limitations and social and political changes the State has undergone, which has made it difficult to develop and execute plans for dissemination and training for authorities and public servants for the purpose of ensuring they are familiar with and can apply the mutual assistance provisions for investigating or prosecuting acts of corruption.

The Committee also takes note, as Bolivia mentions in its response⁷⁵, of the specific technical assistance needs in the areas of designing plans and programs to evaluate observance of the codes of ethics; developing new mechanisms or instruments of social participation; developing statutory and regulatory provisions on the obligation to report acts of public corruption and protection for good-faith whistleblowers; designing and drafting legal provisions on forfeiture of property and assets arising from public corruption; designing and implementing computer systems for follow-up and monitoring cases of public corruption in judicial investigations and prosecutions; and designing and developing an operational system for measuring and evaluating the phenomenon of corruption.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

The Committee did not make recommendations to Bolivia with respect to this provision of the Convention, for it noted that the Republic of Bolivia implemented Article XVIII when it designated the Presidential Anticorruption Delegate as the central authority for the purposes of assistance and international cooperation provided for in the Convention.

7. GENERAL RECOMMENDATIONS

▪ Recommendation 7.1

“Design and implement, when appropriate, programs to train public servants responsible for implementing the systems, laws, measures and mechanisms considered in this report, for the purpose of guaranteeing they are adequately known, administered, and implemented.”

In its response⁷⁶, Bolivia presents information with respect to the foregoing recommendation, of which the Committee notes, as steps that help advance its implementation, the measures taken with respect to holding training courses developed by the Office of the Comptroller General of the Republic during the implementation of the System for Declaring Income and Assets.

In addition, with respect to its implementation, the non-governmental organization “Por Bolivia” states: *“Extensive activities have not been carried out in this area”*⁷⁷

⁷³ Document submitted by the non-governmental organization Por Bolivia, p. 31.

⁷⁴ Response of the Republic of Bolivia to the questionnaire, p. 33.

⁷⁵ *Id.*, pp. 32 and 33.

⁷⁶ Response of the Republic of Bolivia to the questionnaire, p. 34.

⁷⁷ Document submitted by the non-governmental organization Por Bolivia, p. 31.

In this respect, the Committee takes note of the need for Bolivia to give national addition to implementation of the foregoing recommendation.

▪ Recommendation 7.2

“Select and develop procedures and indicators, when appropriate, that make it possible to verify follow-up on the recommendations made in this report and to communicate to the Committee, through the Technical Secretariat, in this regard. For the purposes indicated, it may take into account the list of the most widely used indicators, applicable in the inter-American system, which were available for the selection indicated by Bolivia, which has been published by the Technical Secretariat of the Committee at the website of the OAS, as well as information derived from the analysis of the mechanisms developed in keeping with recommendation 7.3, which follows.”

▪ Recommendation 7.3

“Develop, when appropriate and when they do not yet exist, procedures for analyzing the mechanisms mentioned in this report, as well as the recommendations contained herein.”

In its response⁷⁸, Bolivia presents information with respect to the foregoing recommendations, in the following terms: *“Bolivia did not work on this issue. The problems described at item 1.1.1 [social and political problems in the country] and the changes in administration kept that issue from being addressed.”*

In addition, with respect to its implementation, the non-governmental organization “Por Bolivia” states: *“There is no evidence of actions in this regard.”*⁷⁹

In this respect, the Committee takes note of the need for Bolivia to give more attention to implementing the aforementioned recommendation.

⁷⁸ Response of the Republic of Bolivia to the questionnaire, p. 34.

⁷⁹ Document submitted by the non-governmental organization Por Bolivia, pp. 31 and 32.

END NOTES

ⁱ Under Article 4 of the EFP, “public servant” (“*servidor público*”) is an individual person who, independent of his or her rank or status, provides services working under an entity within the scope of this Law. The term “*servidor público*,” for the purposes of this Law, also refers to the public dignitaries, officials, and employees or other persons who provide services working under state entities, whatever the source of their remuneration.

ⁱⁱ The SAP is the set of rules, principles, and procedures, systematically organized, that make possible the application of the provisions on public function in the Constitution, the EFP, the SAFCO Law, and the applicable regulatory provisions. The SAP is carried out and developed through the lead agency and by the public entities within the scope of the EFP, in keeping with the NB-SAP, basic regulations, and secondary or specialized provisions (Article 56 of the EFP).

ⁱⁱⁱ With the restructuring of the Executive branch, by Law of Ministries No. 1493, of September 17, 1993 and Supreme Decree No. 23660 of October 12, 1993 (Regulation of the Law on Ministries), the Ministry of Finance (*Ministerio de Finanzas*) became part of the Ministry of Treasury and Economic Development (*Ministerio de Hacienda y Desarrollo Económico*). On November 24, 1994, by Presidential Decree No. 23897, the Treasury functions were separated from the Economic Development ones, thus constituting two ministries, Treasury and Economic Development.

^{iv} The provisions contained in the EFP and its Regulation are compulsory for all public servants, independent of the source of their remuneration, such as the Presidency and Vice-Presidency of the Republic, the Ministries of State, the Office of the Comptroller-General of the Republic, the Electoral Courts, the Central Bank of Bolivia, the Superintendencies of Banks and Insurance, the Departmental Prefectures, and other institutions, agencies and enterprises of the State. The administrative career services in the municipal governments, public universities, judicial career service of the Judicial branch, prosecutorial career service in the Public Ministry, Foreign Service and diplomatic career service, public teachers, Health and Social Security Service, shall be regulated by their special legislation applicable in the framework established in the EFP. Public servants employed by the Armed Forces and the National Police shall be subject to chapter III of title II and title V of the EFP (Article 3 of the EFP and Article 2 of Supreme Decree No. 25749).

^v Supreme Decree No. 26115, Article 2 (Scope of Application).- These Basic Rules are compulsory in all public sector entities indicated in: (a) Articles 3 and 4 of the SAFCO Law; (b) Article 3 of the EFP and Law No. 2104, which amends the EFP.

^{vi} Supreme Decree No. 26115, Article 3 (Exceptions).- The persons who occupy those positions elected by national or local vote, by powers conferred by the Constitution, or specific laws to the Legislative branch, the President of the Republic, the Executive branch, the Judicial branch, or the entity in question are excepted from these Basic Rules in all matters which, given the manner in which they entered public service, do not apply to them.

^{vii} “Direct invitation”: Shall be made to persons who have high personal and professional merits so as to cover posts held by public officials who are appointed. In addition, a direct invitation shall be sent to persons of verified professional, technical, administrative, or auxiliary training freely appointed for providing direct support, in the office of the highest-level executive authority.

^{viii} “Internal announcement”: will be directed exclusively to those public servants of the entity, for the purposes of promotion or to be incorporated into the administrative career service, and shall be publicized in a visible place commonly accessed; if none qualifies, then the external announcement will be made.

“External announcement”: will be open to the participation of both the public servants of the entity and persons from outside, in and out of the public sector. It will be published in the Official Registry of Announcements and optionally in local media.

^{ix} The SABS is the set of legal, technical, and administrative provisions that regulate, in a manner interrelated with the other administration and control systems of the SAFCO Law, the procurement, administration, and disposition of goods and services by the public entities (Article 1 of Supreme Decree No. 25964, which approves the Basic Rules of the System for the Administration of Goods and Services [*Normas Básicas del Sistema de Administración de Bienes y Servicios*]).

^x SAFCO Law, Article 10.- The SABS will establish the form of procurement, administration, and disposition of goods and services. It shall be subject to the following rules: (a) The availability of the funds involved will be a condition precedent or the conditions of financing required shall be defined; the powers to request, authorize start-up, and execute the procurement process shall be distinguished from one another; the procedures shall be simplified and the persons in charge of the procurement decision with respect to quality, timeliness, and competitiveness of the supply price, including the effects of the payment terms, shall be identified. (b) The entities shall use the goods and services they procure for the purposes indicated in the Programming of Operations, and shall perform preventive maintenance and safeguard the assets, identifying the persons in charge of managing them. (c) The regulation shall establish mechanisms for the timely decommissioning or sale of the assets, mindful of the specific needs of the owner entities. The sale of shares in mixed-economy enterprises and the transfer or liquidation of state enterprises shall be done after specific or general legal authorization, with proper prior notice, during and after these operations.

^{xi} The consolidated text of Supreme Decree No. 27328, Article 3(g) defines the Model Terms and Conditions as “the standard documents, their compulsory use, which contain mainly the legal, administrative, technical, and economic conditions, the evaluation system, the model contract and forms required for a procurement operation, prepared and approved by the Lead Agency.” At present the following exist: Model Terms and Conditions for the Procurement of Goods; Model Terms and Conditions for the Procurement of Works; the Model Terms and Conditions for the Procurement of General Services; the Model Terms and Conditions for the Procurement of Insurance; the Model Terms and Conditions for the Supply of Pharmaceutical Products; the Model Terms and Conditions for the Procurement of Real Property; and the Model Terms and Conditions for the Lease of Real Property.

^{xii} Procurement by exception is the modality, to be used exceptionally, that allows the Maximum Executive Authority to procure goods, works, and general services without having recourse to bidding or to quotes or proposals, solely and exclusively in the following cases: (a) Contracting of public entities that are trained to provide the service, execute the work, or produce the good, when there are no legally constituted commercial enterprises that can offer the goods and works, and provide the services required; (b) Contracting by national, departmental, and municipal emergency declared pursuant to Law No. 2140 of October 25, 2000, on Risk Reduction and Disaster Response; (c) Contracting of third persons due to breach of contract, in case the goods, works, or services are required on a no-delay basis, by decision of the Highest-level Executive Authority. In this case, one must necessarily consider those who had participated in the procurement process submitting a proposal that met the entity’s requirements, so long as the same conditions of its proposal are adhered to, and so long as the difference in price with respect to the proposal originally awarded is not more than ten percent (10%). In case of not being able to comply with the established conditions, the entity should undertake a new procurement operation; (d) procurement of general goods or services whose manufacture or supply is exclusively from a single supplier, so long as they cannot be substituted by similar general goods or services. A single supplier shall not be accepted when there are alternatives to the product or generic brands. The factory trademark does not constitute, of itself, a grounds of exclusivity; (e) Procurement of armaments and command systems for the Armed Forces, out of considerations of security and national defense; (f) Procurement of works of art; (g) subscriptions to newspapers, magazines, and specialized publications; (h) Purchase of fresh foods and perishables, when it is not possible to have recourse to biddings or to obtaining quotes or bids; (i) Purchase of livestock by selection, in the case of specimens with special characteristics.

^{xiii} The consolidated text of Supreme Decree No. 27328, Article 46.- The Maximum Executive Authority may procure by exception when: (a) The consulting services can only be supplied by a single consultant, be that consultant an individual person or a corporate body. (b) If there are no legally incorporated commercial companies that can offer the consultancy services, public agencies with the capacity to provide the required services may be contracted. (c) During national, departmental, and municipal emergencies declared pursuant to Law No. 2140 of October 25, 2000, on Risk Reduction and Disaster Response, when consultancy services are required.

^{xiv} The consolidated text of Supreme Decree No. 27328, Article 3(b), defines the Maximum Executive Authority as “the highest-ranking officer or representative of each public sector entity, whether the maximum executive or the collegial management, as established in the statutory or regulatory provision that established it.”

^{xv} The consolidated text of Supreme Decree No. 27328, Article 3(v), defines the State Procurement Information System (SICOES) as the “official system established and administered by the lead agency, by which the relevant information on the procurement processes of public entities can be captured and disseminated, from the call for tenders to information on the contract. The system makes it possible to generate information in general and statistical data for its dissemination and transmission by remote electronic communications media.”

^{xvi} The consolidated text of Supreme Decree No. 27328, Article 61.- I. The following administrative resolutions may be subject to the administrative remedy of challenge: (a) the resolution that approves the terms and conditions or request for proposals, when it is considered that they contain errors, anticipated exclusions, or discriminatory preferences that might violate the principles of equality and impartiality provided for by provision of law; (b) the prequalifying resolution or expressions of interest; (c) the resolution making the award; (d) the resolution declaring no award will be made. II. No administrative challenge remedy whatsoever may be brought against preparatory acts that are merely procedural, including reports, expert opinions, or inspections or against any other act or resolution not expressly indicated in section I of this Article III. The resolution that resolves the administrative remedy of challenge may be challenged through the contentious-administrative procedure, which is regulated by the applicable law.

^{xvii} The Public Bidding with Public Announcement for National Purchases of goods is done when the budget approved for the procurement is from one hundred sixty thousand one bolivianos (Bs. 160,001.00) to eight million bolivianos (Bs. 8,000,000.00). These calls for tenders shall be directed to national producer firms or firms that market national products that are legally established in Bolivia based on criteria of quality and price, unless there is no national production of the goods to be contracted. In the event that the call for tenders is declared to have no winner, in keeping with the grounds provided for in Article 28 of the consolidated text of Supreme Decree No. 27328, another public call for tenders will be made that will allow the participation of bidders offering foreign goods. (Consolidated text of Supreme Decree No. 27328, Article 19, section II).

^{xviii} A Public Bidding with National Call for Tenders shall be held when: (a) the budget approved for the procurement of goods is from eight million bolivianos (Bs. 8,000,000.00) to 15 million Housing Development Units (*Unidades de Fomento a la Vivienda*, UFVs 15,000,000.00); (b) the budget approved for the procurement of general services is from one hundred sixty thousand one bolivianos (Bs. 160,001.00) to 15 million Housing Development Units (UFVs 15,000,000.00); (c) the budget approved for the contracting of works is from one hundred sixty thousand one bolivianos (Bs. 160,001.00) to forty million Housing Development Units (UFVs 40,000,000.00). (Consolidated text of Supreme Decree No. 27328, Article 19, section III).

^{xix} Public Bidding with International Call for Tenders shall be done when the approved budget for procurement is greater than the limits indicated for public biddings with national calls for tenders. (Consolidated text of Supreme Decree No. 27328, Article 19, section IV).

^{xx} Article 165 (meaning of terms used) of the Criminal Code: For the purposes of applying this Code, the terms “*funcionario público*” and “*empleado público*” are used to designate one who participates, on a permanent or temporary basis, in the exercise of public functions, either by popular election or by appointment.

The “authority” is considered to be one who, on his or her own or as a member of an institution or court, is in charge or exercises his or her own jurisdiction.

If the crime were committed in the exercise of the public function, the provisions of this Code shall be applied, even when the perpetrator has ceased to be a public servant. +

^{xxi} This study was prepared by Mr. Alberto J. Morales Vargas, instructor at the *Universidad Católica Boliviana* in his capacity as national consultant, published in the book: “*Adaptando la Legislación Penal de Bolivia a la Convención Interamericana contra la Corrupción*”, Secretariat for Legal Affairs, Department of Legal Cooperation and Dissemination of the OAS, 2001 (JL969.5.C6 A3 2001 (Bol) /// OEA/Ser.D/XIX.3 Add.7). This publication contains the reports of the workshop held in La Paz, November 6 and 7, 2000, in the context of the “*Project to Support Ratification and Implementation of the IACAC*” (which resulted from the cooperation agreement signed by the OAS and the IDB on March 26, 1999). The corresponding section of this publication can be found at: www.oas.org/juridico/spanish/agendas/boliviaestpre.htm