

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
Twenty-First Meeting of the Committee of Experts
March 18 to 22, 2013
Washington, D.C.

OEA/Ser.L
SG/MESICIC/doc.358/12 rev. 4
21 March 2013
Original: Spanish

REPUBLIC OF PERU

FINAL REPORT

(Adopted at the March 21, 2013 plenary session)

SUMMARY

This report contains a comprehensive review of the implementation in the Republic of Peru of Article III, paragraph 9, of the Inter-American Convention against Corruption, covering “oversight bodies, with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts,” which was selected by the MESICIC Committee of Experts for the fourth round; of the best practices reported by those bodies; and of the follow-up of the implementation of the recommendations formulated to the state in the First Round.

The review was conducted in accordance with the Convention, the Report of Buenos Aires, the Committee’s Rules of Procedure, and the methodologies it has adopted for conducting on-site visits and for the Fourth Round, including the criteria set out therein for guiding the review based on equal treatment for all states parties, functional equivalence, and the common purpose of both the Convention and the MESICIC of promoting, facilitating, and strengthening cooperation among the states parties in the prevention, detection, punishment, and eradication of corruption.

The review was carried out taking into account Peru’s Response to the Questionnaire, information gathered by the Technical Secretariat, and, as a new and important source of information, the on-site visit conducted from September 25 to 27, 2012, by the members of the review subgroup for Peru, comprising The Bahamas and Colombia, with the support of the Technical Secretariat. During that visit, the information furnished by Peru was clarified and expanded and the opinions of civil society organizations, the private sector, professional associations, academics, and researchers on issues of relevance to the review were heard. This provided the Committee with objective and complete information on those topics.

The review of the oversight bodies was intended, in accordance with the terms of the methodology for the Fourth Round, to determine whether they have a legal framework, whether that framework is suitable for the purposes of the Convention, and whether there are any objective results; then, taking those observations into account, the relevant recommendations were issued to the country under review.

The following bodies in Peru are reviewed in this report: the Office of the Comptroller General of the Republic; the Office of the Attorney General (*Ministerio Público*); the Judiciary (PJ); and the Anti-corruption Prosecutor’s Office.

Some of the recommendations formulated to Peru for its consideration in connection with the aforementioned bodies are aimed toward objectives, such as the following:

With regard to the CGR, the objective is to strengthen it by ensuring that it has the human and financial resources necessary for the proper fulfillment of its functions, and by considering allocating the CGR a percentage of the national budget; and to conduct a systematic review of the State’s entire regulatory framework that limits strengthening the capacities of CGR and take steps to prevent the enactment of legislation that seeks to limit anticorruption oversight.

In connection with the analysis of the Office of the Attorney General, the objective is to establish Corporate Provincial Public Prosecutors’ Offices specializing in corruption offenses committed by officials in those judicial districts that do not already have one; to ensure that these important (existing and future) units specializing in the investigation, prosecution, and indictment of acts of corruption are endowed with the human and financial resources needed for them to fulfill their

functions; and to review the impact of the new shorter procedural time limits established for preliminary investigations in the new Code of Criminal Procedure to determine if allowing more time would be necessary, especially for more complex corruption cases, and take appropriate action.

As for the Judiciary, the goal is to give due consideration to extending the prescription periods for corruption offenses, so as to prevent their perpetrators going unpunished; and to establish binding restrictive criteria, limiting judges' authority to hand down suspended sentences for those convicted of acts of corruption.

As regards the Anti-Corruption Prosecutor's Office, the objective is to evaluate the current status of the cases for which the Anti-Corruption Prosecutor's Office is responsible and consider taking legislative or other measures to determine what type of cases, based on their importance and/or seriousness, should fall within the sphere of competence of that Specialized Prosecutor's Office and which should be addressed by the institutional Public Prosecutors; to step up efforts by the Anti-Corruption Prosecutor's Office to increase actual recovery of reparation payments ordered by the courts, while making the regulatory and operational changes needed to fortify the Office as an institution and giving due consideration to legislative initiatives that support its work of recovering assets and property for the Treasury.

The best practice described by Peru refers, basically, to the "Young Auditors Program" of the CGR, which consists in students in their last years of secondary school conducting citizen surveillance activities. Accompanied by their teachers, they prepared, executed, and reported the results of "school children's oversight" of their educational establishments, the Local Educational Management Unit (UGEL), the municipality, and the local police stations.

Regarding follow up to the recommendations made to Peru in the First Round, which the Committee thought needed additional attention in the Second and Third Round reports, based on the Fourth Round methodology and taking into account the information provided by Peru in its reply to the questionnaire and during the on-site visit a decision was made as to which recommendations had been satisfactorily implemented; which required additional attention; and which needed to be reformulated; and a list was made of those that remain in effect, which is attached to the report as Annex I.

Three major advances considered by the Committee in implementation of the recommendations were: The promulgation and entry into force of Law No. 29542 (Law on the Protection of Whistleblowers in the Administrative Sphere and Effective Collaboration in Criminal Matters) and its enabling regulation; The promulgation of Law No. 29785 (Law on the Right to Prior Consultation of Indigenous and Native Peoples); and The adoption of the Open Government Action Plan (Ministerial Resolution No. 085-2012-PCM), which contains specific commitments with respect to transparency and access to public information.

At the same time, some of the recommendations made to Peru in the First Round which are still in effect or were reformulated are aimed at, for instance: complementing the provisions on the contents of Sworn Statements of Income, Property, and Revenues of Government Officials and Civil Servants, in such a way that they include the express obligation of the declarants to include in those statements information regarding their "liabilities"; and developing this concept by indicating what items constitute liabilities and the information that needs to be provided in relation to them; strengthening systems to insure that the CGR effectively verifies the contents of the Sworn Statements, by guaranteeing it access to any necessary sources of information and seeking, as far as possible, to

ensure connectivity of the information contained in the databases kept by the various bodies, in order to enable the CGR to conduct swift and effective analysis of changes in the income and wealth of government officials; and considering the establishment of a governing body to oversee access to information and to disseminate, supervise, and enforce full compliance with the Transparency and Access to Public Information Act, with authority to punish noncompliance and to resolve cases in which access to information is denied, without having to resort to the judiciary, as well as to guarantee that access to public information cannot be denied or restricted on grounds other than those determined by law or based on criteria other than those established by law.

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

**REPORT ON IMPLEMENTATION IN THE REPUBLIC OF PERU OF THE CONVENTION
PROVISION SELECTED FOR REVIEW IN THE FOURTH ROUND, AND ON FOLLOW-
UP TO THE RECOMMENDATIONS FORMULATED TO THAT COUNTRY IN THE
FIRST ROUND¹**

INTRODUCTION

1. Content of the Report

[1] This report presents, first, a comprehensive review of the Republic of Peru's implementation of the provision of the Inter-American Convention against Corruption that was selected for review by the Committee of Experts of the Follow-up Mechanism (MESICIC) for the Fourth Round. That provision appears in Article III (9) of the Convention, pertaining to "Oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts."

[2] Second, the report will examine the best practices that the country under review has voluntarily expressed its wish to share in regard to the oversight bodies under review in this report.

[3] Third, as agreed by the Committee of Experts of the MESICIC at its Eighteenth Meeting, in compliance with recommendation 9(a) of the Third Meeting of the Conference of States Parties to the MESICIC, this report will address the follow-up of implementation of the recommendations that the Committee of Experts of MESICIC formulated to the Republic of Peru in the First Round and that it deemed to require to require additional attention in the reports it adopted for that country in the Second and Third Rounds, which are available at: <http://www.oas.org/juridico/english/per.htm>.

2. Ratification of the Convention and adherence to the Mechanism

[4] According to the official records of the OAS General Secretariat, the Republic of Peru ratified the Inter-American Convention against Corruption on April 4, 1997 and deposited its instrument of ratification on June 4, 1997.

[5] In addition, the Republic of Peru signed the Declaration on the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption on June 4, 2001.

I. SUMMARY OF THE INFORMATION RECEIVED

1. Response of the Republic of Peru

[6] The Committee wishes to acknowledge the cooperation that it received, throughout the review process from the Republic of Peru and in particular from the General Coordination of the High-Level Anticorruption Commission (CAN), which was evidenced, inter alia, in the Response to the Questionnaire and in the constant willingness to clarify or complete its contents, and in the support for the on-site visit to which the following paragraph of this report refers. Together with its Response,

1. This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on March 21, 2013, at its Twenty First Meeting, held at OAS Headquarters, March 18-22, 2013.

Peru sent the provisions and documents it considered pertinent. The Response as well as the provisions and documents may be consulted at: www.oas.org/juridico/spanish/mesicic4_per.htm

[7] The Committee also notes that the country under review gave its consent for the on-site visit, in accordance with provision 5 of the *Methodology for Conducting On-Site Visits*.² As members of the preliminary review subgroup, the representatives of The Bahamas and Colombia conducted the on-site visit from September 25 through 27, 2012, with the support of the MESICIC Technical Secretariat. The information obtained on that visit is included in the appropriate sections of this report, and its agenda of meetings is appended thereto, in keeping with provision 34 of the *Methodology for Conducting On-Site Visits*.

[8] For its review, the Committee took into account the information provided by the Republic of Peru up to September 27, 2012, as well as that provided and requested by the Secretariat and the members of the review subgroup to carry out its functions, in keeping with the *Rules of Procedure and Other Provisions*; the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round*; and the *Methodology for Conducting On-Site Visits*. This information may be consulted at the following webpage: www.oas.org/juridico/english/FightCur.html

2. Information received from civil society organizations and/or, *inter alia*, private sector organizations; professional associations; academics and researchers

[9] The Committee did not receive any documents from civil society organizations within the time period established by the Committee in the schedule, in accordance with Article 34(b) of the Committee's *Rules of Procedure*.

[10] Nonetheless, during the on-site visit to the country under review, information was gathered from civil society and private sector organizations, professional associations, academics and researchers, who were invited to participate in the meetings held for that purpose, pursuant to provision 27 of the *Methodology for Conducting On-Site Visits*. A list of invitees is included in the agenda of the on-site visit, which has been annexed to this report. This information is reflected in the appropriate sections of this report.

II. REVIEW, CONCLUSIONS, AND RECOMMENDATIONS REGARDING THE STATE PARTY'S IMPLEMENTATION OF THE CONVENTION PROVISION SELECTED FOR THE FOURTH ROUND

OVERSIGHT BODIES, WITH A VIEW TO IMPLEMENTING MODERN MECHANISMS FOR PREVENTING, DETECTING, PUNISHING, AND ERADICATING CORRUPT ACTS (ARTICLE III (9) OF THE CONVENTION)

[11] The Republic of Peru has a set of oversight bodies³ charged with developing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts, including, in

2. Document SG/MESICIC/doc.276/11 rev. 2, which may be consulted at the following webpage: http://www.oas.org/juridico/english/met_onsite.pdf

3. The methodology approved for the Fourth Review Round (document SG/MESICIC/doc.289/11 rev.2) establishes in Section IV, with reference to Article III (9) of the Convention (on oversight bodies) that: "*With respect to the foregoing provision, the review shall consider if the measures adopted by the States Parties in this respect are designed "to create, maintain and strengthen" oversight bodies, with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts, as provided in Article III (9) of the Convention. To that end, first, note will be*

particular, the Office of the Comptroller General of the Republic (CGR); the Office of the Attorney General (*Ministerio Público* - MP); the Judiciary (PJ); the Anti-corruption Prosecutor's Office; the Public Administration Secretariat (SGP); the National Police; the Government Procurement Supervision Agency (OSCE); and the National Civil Service Authority (SERVIR).

[12] The following is a brief description of the purposes and functions of the four bodies selected by the Republic of Peru that are analyzed in this report.

[13] The Office of the Comptroller General of the Republic (CGR) is the technical entity in charge of the National Oversight System (*Sistema Nacional de Control*) responsible for supervising, monitoring, and verifying correct management, collection, and use of State resources and property. In order to perform its functions appropriately, the CGR is endowed with administrative, functional, economic, and financial autonomy.

[14] The Office of the Attorney General (MP) is the entity in charge of investigating crime. Thus, Article 159 of the Peruvian Constitution establishes that the MP is responsible for, inter alia: 1. [I] initiating, on its own or upon request by a party, judicial action in defense of the legality and public interests protected by law; 2. ensuring the independence of the judicial organs and the proper administration of justice; 3. representing society in judicial processes. 4. handling, from the outset, the investigation of offenses. With this purpose, the National Police is obligated to fulfill the mandates of the Public Ministry within the scope of its function; 5. exercising criminal action of its own accord or upon request by a party.

[15] This constitutional function was reinforced by the Code of Criminal Procedure of 2004 (CCP 2004). Article IV of the Preliminary Title of that Code establishes, inter alia, that the MP is responsible for bringing criminal charges and satisfying the burden of proof. It conducts the investigation from the start.

[16] The Judiciary is the institution responsible for administering justice, pursuant to Articles 138 and 139 of the Political Constitution and its own Organic Law.

[17] Article 138 of the Constitution states "The power to administer justice emanates from the people and is exercised by the Judicial Power through its hierarchic organs, in accordance with the Constitution and the laws." For its part, Article 139 establishes as one of the principles and rights of the judicial function: "The unity and exclusiveness of the judicial function."

[18] The function of judges as guarantors of legality, like that of prosecutors, was strengthened by the CPP 2004, particularly inasmuch as Article V of its Preliminary Title, which refers to the Judiciary's sphere of competence, states that: a) It is incumbent upon the jurisdictional body to conduct the intermediate stage and especially the trial stage, and to issue judgments and other resolutions provided for by law; and b) Nobody may be sentenced or subjected to a security measure without a resolution of the legally competent jurisdictional body.

made of the oversight bodies in the country concerned that would be relevant for the purposes of the above provision of the Convention, that is, for preventing, detecting, punishing, and eradicating corrupt acts. Second, bearing in mind that in the States Parties to the MESICIC there are numerous oversight bodies that have been assigned the aforementioned purposes, each country will select four or five such bodies, taking into account their institutional importance and that their assigned functions encompass one or more of the purposes of preventing, detecting, punishing, and eradicating corrupt acts that trigger disciplinary; administrative; financial or civil; and criminal responsibility."

[19] The Anti-corruption Prosecutor's Office forms part of the State's Legal Defense System and, in that capacity, its purposes is to strengthen, unify, and modernize that system throughout the national territory. Legal defense of the State comprises all proceedings of a procedural, arbitral and substantive nature permitted by law, in all of which the Office may, ex officio, file suit, accuse, and participate.

[20] The principal functions of the Anti-corruption Prosecutor's Office include: a) Representation and legal defense of the Peruvian State in matters or proceedings that, because of their specialized nature, the Office addresses, or which are specifically assigned to it by the President of the State's Legal Defense Council; b) Legal defense of the State in all proceedings of a procedural, arbitral and substantive nature permitted by law, in all of which the Office may file suit, accuse, and participate; c) Reporting to the State's Legal Defense Council, at its request, on all matters for which the Office is responsible; d) Coordinating compliance with and execution of judgments contrary to the interests of the State; e) Requisitioning the information and/or documents needed for the defense of the State; f) Reconciling, settling, or withdrawing suits in accordance with regulatory requirements and procedures; and g) Consulting with the State's Legal Defense Council on matters relating to legal defense of the State's interests.

1. THE OFFICE OF THE COMPTROLLER GENERAL OF THE REPUBLIC (GCR)

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

[21] The Office of the Comptroller General of the Republic (CGR) has a set of provisions in its legal framework, as well as other measures that refer, *inter-alia*, to the following:

[22] Article 82 of the Peruvian Constitution establishes that the CGR is a decentralized entity under public law that enjoys autonomy in accordance with its organic law and that it is the highest organ of the National Oversight System. It oversees the legality of the implementation of the national budget, of the management of the public debt, and of the actions of those institutions subject to its control.⁴

[23] Law N° 27785 of July 13, 2002 ("Organic Law of the National Oversight System and of the Office of the Comptroller General of the Republic") establishes that the CGR is the entity in charge of the National Oversight System; that it is endowed with administrative, functional, economic, and financial autonomy; and that its mission is to provide efficient and effective steering and supervision of government oversight, focusing on more robust and transparent management of government entities, promoting ethical values and a sense of responsibility among civil servants, contributing, along with the other branches of government, in decision making, and working with citizens to ensure their appropriate participation in social oversight. Law N° 27785 further determines that the CGR may not exercise powers or functions other than those established in the Political Constitution, in that Law, in regulatory provisions and in the specialized technical rules it issues in the exercise of its powers (Law N° 27785, Article 16°).

[24] Article 22 of Law N° 27785 establishes the powers of the CGR, which include, in particular: "*b) Ordering the organs of the system to conduct such oversight activities as it deems necessary or directly performing ex-post external audits of acts undertaken by those entities; (...) d) Ordering the Public Prosecutor of the Comptroller General's Office, or the Sectoral Prosecutor, or the Legal*

4. The CGR's organizational chart as of September 2012 is posted on its website at: https://apps.contraloria.gob.pe/wcm/publicaciones/transparencia/2012/Organigrama_a_Setiembre2012_segun_RC324-2012-CG.pdf

Representative of the audited entity to institute immediate appropriate legal action in cases in which a directly exercised audit reveals financial damage or prima facie evidence of a crime; (...) g) Undertaking consultations, issuing institutional pronouncements, and interpreting government oversight rules that are binding, or, where applicable, to be used as guidelines (...); h) Approving the National Audit Plan and government entities' annual audit plans; (...) j) Issuing binding prior opinions on the procurement of goods, services, and works that by law are classified as military or domestic security secrets and, as such, exempt from public tender, competitive bidding, or direct contract regulations; (...) n) Receiving and attending to complaints and suggestions from citizens regarding public administration functions, and either processing them in-house or deriving them to the competent authority, whereby the identity of the complainants and the content of their complaint shall be protected by the principle of confidentiality (...)"

[25] Article 3° of Law N° 27785 establishes the role of entities subject to auditing by the National Oversight System, regardless of the legal regime they operate under and of their sources of funding.⁵ Article 4° of the same Law establishes that those entities that, under the powers vested in them, direct State resources and assets, including donations from foreign cooperation sources, to domestic or international nongovernmental entities not subject to oversight, are obliged to report the investment and its outcomes to the Office of the Comptroller General, as part of the ongoing evaluation required in respect of such resources.

[26] Pursuant to Article 10° of Law N° 27785, audits constitute the essential tool of the National Oversight System. In applying the rules, procedures, and principles governing government oversight, it uses them to verify and systematically and objectively evaluate the acts and outcomes of an entity's management and execution of its institutional funds, assets, and operations. The audits are conducted in accordance with the National Audit Plan and the plans approved for each organ of the System based on their activity schedules and the requirements of the Office of the Comptroller General. The oversight actions trigger reports designed to improve management of the entity concerned and pointing out any responsibilities detected. Their findings are submitted to the head of the entity, unless he or she is included in the report as bearing civil or criminal liability.

[27] Following audits, "Audit Reports" (*Informes de Control*) are issued, which might contain evidence of irregularities detected and indications of who is responsible for either administrative/functional or criminal or civil law irregularities. In the latter case, the report is referred to as a "Special Report."

[28] Law N° 29622 of December 6, 2010 also amended Law No. 27785 and broadened the CGR's "power to punish" civil servants in cases involving administrative/functional liability.

5. Those entities are: "a) *The Central Government, its entities and organs that, however denominated, form part of the Executive Branch, including the Armed Forces and the National Police, and their respective institutions; b) the regional and local governments and the institutions and enterprises pertaining to them because of the funds and shares they have in them; c) The administrative units of the Legislature, the Judiciary, and the Office of the Attorney General (Ministerio Público); d) The Autonomous Agencies established under the Constitution and by law and institutions and persons subject to public law; e) the public utilities regulating agencies and the entities responsible for supervising compliance with the investment commitments arising out of privatization contracts; f) state enterprises and those in which the State has shares, regardless of the nature of the corporation, on account of the funds and assets making up said participation; and g) private entities, nongovernmental entities, and international entities solely on account of the State funds and assets they receive or administer. In these cases, the entity subject to auditing must provide the mechanisms needed to enable the System to exercise detailed oversight.*" (Law N° 27785, Article 3°).

[29] The Punishment Procedure applies to serious and highly serious violations detected in the “Audit Reports” issues by the organs of the National Oversight System, involving failure to comply with the administrative legal system, in-house rules, or any other obligations derived from the exercise of a particular position, as provided in Article 2 of the enabling regulation to Law N° 29622.

[30] According to Article 3 of the enabling regulation to Law N° 29622, the Punishment Procedure is applicable to civil servants referred to in the basic definition contained in the ninth final provision of Law N° 27785, regardless of the violator’s employment, contractual, statutory, administrative, or civil status or the regime to which he or she is subject, or to the effective exercise of that tie to the entities referred to in Article 3 of Law N° 27785.

[31] Article 3 of the enabling regulation to Law N° 29622 also establishes that the CGR’s power to punish shall not apply to persons who are serving or who have served in private entities, nongovernmental entities, and international entities that receive or administer State funds and assets, to which reference is made in Article 3 of Law N° 27785. Also excluded from the sphere of application of the CGR’s power to punish are authorities elected by the popular vote, the heads of the constitutionally autonomous agencies, and authorities entitled to prior political impeachment (*prerrogativa del antejuicio politico*), whose administrative/functional liability shall be subject to the procedures established for each of those cases.

[32] The procedure applicable to punishments on account of administrative/function liability is set forth in Articles 45 to 60 of Law N° 29622 and has two levels of jurisdiction. The first, for which the CGR is responsible, comprises an investigative body and a body that imposes sanctions. Both are technically autonomous. The investigative body (*órgano instructor*) conducts the inquiries and proposes an assessment of the violations involved and appropriate sanctions to the body responsible for imposing them (*órgano sancionador*). The latter imposes or dismisses the sanctions proposed through a resolution stating the reasons for its decision (Law N° 29622, Article 52 to 55). The second level of jurisdiction is that of the Higher Court of Administrative Liabilities,⁶ which is a collegiate body attached to the Office of the Comptroller General with technical and functional independence within its spheres of competence and autonomy in respect of the decisions it takes. (Law N° 29622, Articles 56 to 58). The Court’s resolutions may be appealed at the judicial level under administrative law, pursuant to Article 148° of the Political Constitution of Peru (Law N° 29622, Article 59).

[33] The CGR is headed by the Comptroller General of the Republic, who is appointed by Congress, at the suggestion of the Executive Branch,⁷ for a seven-year term and may only be dismissed by Congress for gross negligence⁸ (Constitution, Article 82, second paragraph). Articles 28 and 29 of Law N° 27785 establish the requirements and impediments for the post, respectively. The broad powers of the Comptroller General of the Republic are detailed in Article 32 of Law N° 27785. According to that Article, the Comptroller General is empowered to determine the CGR’s internal organizational structure, staffing, and salary scale.

6. The Higher Court of Administrative Liabilities comprises 5 members, elected by public competition based on merit. They serve for a five-year term and may only be removed for duly substantiated just and serious cause (Law N° 29622, Article 56). The qualifications required of a member of the Court are established in Article 57 of Law N° 29622.

7. According to Peru’s reply to the Fourth Round questionnaire, p. 11, for the last appointment, the Executive issued a call for candidates through the Office of the President of the Council of Ministers.

8. According to Article 31 of Law N° 27785, in the case of the Comptroller General, gross negligence would be: “a) wrongful act or intentional neglect in the performance of his or her job that was detrimental to State assets; b) abandonment of the post, in the form of continuous and unjustified failure to attend his or her office for more than fifteen business days; c) violation of legal prohibitions and disqualifications.”

[34] CGR staff is governed by private sector labor laws (Law N° 27785, Article 36).⁹ According to Peru's reply to the Fourth Round questionnaire,¹⁰ the CGR currently has two staff categories: 1) Personnel selected on their merits by public competition (Framework Law on Government Employment, Law N° 28175, Articles 5 to 8), and; 2) Trust Personnel, not to exceed 5% of positions filled, which can be freely appointed and dismissed (Framework Law on Government Employment, Law N° 28175, Article 4, second paragraph). According to that same reply to the questionnaire, the CGR has 1,514 career staff and 75 senior management staff (including staff holding positions of trust). Most of the managers are chosen from career staff within the organization, given the specialized nature of governmental oversight.

[35] As regards discipline, all CGR personnel are bound by the Law establishing the Civil Service Code of Ethics, Law N° 27815 and its enabling regulations, adopted by Supreme Decree N° 033-2005-PCM, the in-house regulations, adopted by means of Office of the Comptroller General Resolution N° 240-2010-CG, the Government Auditor's Code of Ethics adopted by Office of the Comptroller General Resolution N° 077-99-CG, and Rules Governing the Conduct and Performance of Employees of the Office of the Comptroller General and Institutional Oversight Bodies, Instruction N° 010-2008-CG, adopted by Office of the Comptroller General Resolution N° 430-2008-CG.

[36] The reply to the Fourth Round questionnaire provides a detailed account of a number of manuals and compendia prepared for the various departments within the CGR,¹¹ such as: Professional Standards (Ethics and Transparency; Auditor Qualifications); Pre-Audits (Additional Requests and Supervision of Public Works; Indebtedness; Internal Procurement or Military Secret); Preventive Audits (Overseer's Offices; etc.); Ex-post audits (Government Audit Standards; Government Audit Manual; Follow-up to Recommendations; etc.); and Audit Activities (Rapid Deployments; Social Oversight; Macro Audits; Social Programs; Audits of Capital and Accounts, etc.).

[37] The CGR has Rules of Procedure governing Organization and Functions (ROF), adopted by Office of the Comptroller General Resolution N° 039-2013-CG, which establish the organizational structure, hierarchy, and functions of the Office's structural units. The CGR also has an Organization and Functions Manual (MOF) for Senior Management Positions.¹²

[38] The National Oversight School (ENC)¹³, established in 1992 by the National Oversight System Law in effect at that time (Decree Law N° 26162), is responsible for training CGR staff. In its reply to the Fourth Round questionnaire, the country under review provides information on educational courses promoted by the ENC and on CGR staff participation in them and other international training events.¹⁴

9. Several employment regimes coexist within the Peruvian public administration. One of them is the regime regulated by Legislative Decree 728, the Labor Productivity and Competitiveness Law, which regulates the employment regime within private activities. Those regimes do not affect the status of public officers or employees held by persons who work in the public administration.

10. See Peru's Reply to the Fourth Round questionnaire, pp. 11 and 12, posted at:

http://www.oas.org/juridico/PDFs/mesicic4_per_resp.pdf

11. See Peru's Reply to the Fourth Round questionnaire, pp. 14-16 and Annex N° 1.

12. This information is posted in the Transparency Portal on the CGR's website (Planning and Management Section), at: <https://apps.contraloria.gob.pe/transparencia/>

13. <http://www.contraloria.gob.pe/wps/portal/portalcgr/website/secciones/enc/inicioenc/inicioenc>

14. See Peru's reply to the Fourth Round questionnaire, pp. 13 and 14.

[39] With respect to implementation of modern systems or technologies to facilitate its work, in its reply to the Fourth Round questionnaire, Peru refers to various cross-cutting computerized systems used by the CGR, such as the Governmental Oversight System (SCG),¹⁵ for integrated management of all audits triggered by the CGR at each of their stages. It also mentions specific systems, such as the Prosecuting Attorney System (*Sistema Procuraduría* - PPU) system; Accountability (RCU); Hiring and Procurement (CAD); Emblematic Cases (CEM), and Complaints System (SAD), and others.¹⁶

[40] To inform the general public about its objectives, functions, activities, and ways of contacting it, the CGR has a website,¹⁷ on which it posts the Consolidated Amended Text of the CGR's Administrative Procedures (TUPA),¹⁸ aimed at helping citizens to use the system and its procedures. The CGR website also contains the text of its Strategic Plan for 2012-2014,¹⁹ mechanisms for filing complaints, such as the National System for Attending to Complaints (SINAD)²⁰ and a section in which citizens can access a number of systems developed by the Office of the Comptroller General.²¹ The CGR's official profile can also be accessed via Twitter.²²

[41] For accounting, financial, budgetary, operational and equity-related auditing, the CGR has an Institutional Oversight Organ answering to the Comptroller General (Rules of Procedure governing Organization and Functions, Articles 18 and 19). Furthermore, in its reply to the Fourth Round questionnaire, Peru mentions a proposed In-house Instruction (*Directiva*) entitled "Response to Denunciations, Complaints and Claims against personnel of the Office of the Comptroller General of the Republic," aimed at establishing uniform criteria for dealing with denunciations, complaints, and claims filed regarding actions taken by its staff, as a mechanism for preventing, detecting, and eradicating possible corrupt practices.²³ External oversight of the CGR is exercised by the Congress of the Republic, pursuant to Article 25 of Law N° 27785.

[42] The CGR guarantees its budget resources at the Budget Programming and Formulation Phase, in the sense of forecasting expenditure, by collecting, evaluating, and consolidating information regarding the expenses that the Office will incur in order to function and conduct its operations. Once the budget has been formulated, it is coordinated with the Ministry of Economy and Finance and then substantiated before the Congressional Committee on the Budget and National Accounts for its approval. During the Committee's on-site visit, the CGR was asked to provide data on its budget for the past five years and its relation to the national budget.²⁴ In 2006, the CGR budget amounted to 0.28% of the national budget; in 2007 it was 0.25%; in 2008 0.17%; in 2009 0.15%; in 2010 0.18%; in 2011 0.23%; and in 2012 0.25%.

15. Website of the National Oversight System (SNC): <http://goo.gl/CSAZ8>

16. See Peru's reply to the Fourth Round questionnaire, pp. 19 and 20.

17. <http://www.contraloria.gob.pe/>

18. TUPA – Administrative Procedures in the CGR:

[http://www.serviciosalciudadano.gob.pe/bus/preClaTraInstitucion.asp?ent_nom=Contralor%C3%ADa%20General%20de%20la%20Rep%C3%BAblica%20\(CGR\)&id_entidad=19](http://www.serviciosalciudadano.gob.pe/bus/preClaTraInstitucion.asp?ent_nom=Contralor%C3%ADa%20General%20de%20la%20Rep%C3%BAblica%20(CGR)&id_entidad=19)

19. <http://www.contraloria.gob.pe/wps/portal/portalcgr/website/secciones/cgr/planeamientoestrategico/planestrategico/>

20. See SINAD's Webpage: <http://goo.gl/CfmFT>

21. CGR – Citizens' Questions: <http://goo.gl/kHhL>

22. <http://twitter.com/ContraloriaPeru>

23. See Peru's reply to the Fourth Round questionnaire, pp. 22 and Annex N° 2.

24. The information regarding the CGR's budget in relation to Peru's national budget is posted at:

http://www.oas.org/juridico/pdfs/mesicic4_per_cgr_presu3.pdf

[43] Regarding coordination mechanisms for harmonizing the CGR's functions with those of other oversight bodies or government authorities, Peru's reply to the Fourth Round questionnaire²⁵ reports that the CGR has signed agreements, cooperation protocols, and strategic partnerships with various organs, such as: the Judiciary and the Office of the Attorney General (*Ministerio Público*) ("Tripartite Framework Agreement on Inter-Agency Cooperation between the Judiciary, the Office of the Attorney General, and the Office of the Comptroller General"²⁶ and a Specific Tripartite Agreement²⁷), the Ombudsman's Office, the National Electoral Board, the Ministry of Education, the Lima Chamber of Commerce and Peru Cámaras, the National Council of the Judiciary (CNM), the Government Procurement Supervision Agency (OSCE), the National Superintendency of Public Registries – SUNARP, and others.²⁸

[44] As regards transparency and accountability, under Law N° 27785, the Comptroller General of the Republic has to present an Annual Report on his work to Congress, making recommendations as to how to improve public administration and efforts to combat corruption (Law N° 27785, Article 32.k). These are posted on the CGR website.²⁹ Moreover, through that website, and its Transparency Portal in particular,³⁰ the CGR accounts to citizens for its work and reports to them on the outcomes of its audits.

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

[45] The Office of the Comptroller General of the Republic has a set of provisions and/or other measures relevant to the purposes of the Convention, some of which were briefly described in Section 1.1 of this report. Nevertheless, the Committee deems it appropriate to make a number of observations in relation thereto:

[46] First, during the on-site visit, the representatives of the CGR reported that Law N° 29873 of May 25, 2012 had amended the Government Procurement Law by including, in the last paragraph of Article 3.3.3, an exemption from CGR oversight for procurement contracts entered into in accordance with the requirements and specific procedures of international organizations, States, or cooperation agencies, provided that said contracts are associated with donations or government loan operations.

[47] By not specifying that this exemption from CGR oversight is limited to international organizations' and cooperation agencies' own funds, this provision would appear to contradict Law N° 27785, which in Articles 3 and 4 establishes that the CGR is empowered to exercise government oversight in international entities that receive or administer Peruvian State funds or assets. Accordingly, the Committee considers that the last paragraph of Article 3.3.3 of Law No. 29873 should be revised with a view to taking the necessary measures so as not to restrict CGR oversight of those entities. The Committee will formulate a recommendation in that regard. (See Recommendation 1.4.1 in Section 1.4 of this report).

[48] Second, it was also reported during the on-site visit that the powers of the CGR established in Law N° 27785 and other oversight norms had been curtailed by later regulations, such as Emergency Decree N° 081-2009, which establishes the non-binding nature of the CGR's prior reports for public

25. See Peru's reply to the Fourth Round questionnaire, pp. 24 to 29.

26. Posted at: http://www.oas.org/juridico/pdfs/mesicic4_per_cgr_conv2.pdf

27. Posted at: http://www.oas.org/juridico/pdfs/mesicic4_per_cgr_conv1.pdf

28. For the complete list of cooperation conventions, agreements, and protocols, see Peru's reply to the Fourth Round questionnaire, pp. 24 to 29.

29. The CGR's Annual Performance Reports are posted at: <http://goo.gl/gXLkU>

30. <https://apps.contraloria.gob.pe/transparencia/>

investment agreements involving private company participation (Law N° 29230) and that such prior reports may only address aspects that impair the financial capacity of regional and local governments. It was likewise reported that the aforementioned Emergency Decree had hampered the work of the CGR by shortening the times allowed for prior opinions to three business days for collecting additional information and 10 business days for issuing the report. The previous deadline for issuing a report had been 45 business days.

[49] The Committee considers it necessary for the Republic of Peru to analyze mechanisms for preventing the curtailment or softening of anti-corruption oversight powers through legal provisions. In this connection, it recommends restoring the CGR's capacity to exercise effective prior control of public investment contracts involving private sector participation in regional and/or local governments, by reinstating the original deadlines for issuance of the CGR's prior reports and the binding nature of those prior reports (See Recommendation 1.4.2 in Section 1.4 of this report).

[50] It is worth noting that in the Annual Report on the Fight against Corruption in Peru (2010), the Working Group against Corruption made the following comment: *"However, it is obvious that the mechanisms for exercising that oversight continue to be weakened by further decrees issued by the central government and applicable to regional and local governments that prevent proper control. For example, Emergency Decree N° 081-2009, published on July 18, 2009, amends Law N° 29230 (a law that fosters regional and local public investment with private sector participation) in order to facilitate – for the most part– infrastructure projects. As a result of that amendment, the report by the Office of the Comptroller General of the Republic on regional and local public investment agreements with selected enterprises is limited solely to matters relating to the chosen enterprise's financial capacity. Worse still: thanks to Emergency Decree N° 081-2009, that report is no longer binding."*

[51] *Although Emergency Decree N° 081-2009 refers to a form of public investment project execution other than execution through executing units (núcleos ejecutores), there has been a noticeable trend toward diminished CGR oversight mechanisms in regional and local bodies: a trend that is reinforced by transfers of resources to executing units without establishing specific oversight mechanisms (...)*³¹

[52] *Third*, the Committee has ascertained that although the CGR's budget increased in absolute terms from approximately 154 million new Soles in 2006 to 293 million in 2012, those amounts declined as a percentage of the total national budget from 0.28% in 2006 to 0.25% in 2012. In 2009, moreover, there was a sharp reduction in the CGR budget.

[53] The Committee was also told during its on-site visit that each year the CGR establishes policy guidelines and priorities to be taken into account in formulating its Annual Oversight Plan, so as to direct the National Oversight System's investigations toward corruption-prone areas and toward entities managing the biggest budgets: a process whereby the CGR automatically generates demand for its activities. The "unpredictable demand" for those activities, on the other hand, stems from legal mandates for the CGR to intervene in a series of operations (such as those generated by the SINAD or requests from the Attorney General's Office). The Committee was told that this demand exceeds the CGR's operating capacity and that only 20% of the CGR's budget is used for activities and priorities set by the CGR itself, such as implementation of its anti-corruption strategy, awareness

31. Annual Report on the Fight against Corruption in Peru (2010), pp. 75 and 76. Available at: http://www.oas.org/juridico/pdfs/mesicic4_per_gtcc.pdf

campaigns, and preventive actions.³² Note is also taken of the increased functions assigned to the CGR following the adoption last year of Law N° 29622, which empowers the Office of the Controller General to impose sanctions in cases involving administrative/functional liability.

[54] In light of the above, and bearing in mind the importance of the CGR's work and its need to have the human and financial resources required for the proper performance of its functions, the Committee will formulate a recommendation on this matter (See Recommendation 1.4.3 in Section 1.4 of this report).

[55] Fourth, the Committee was told during the on-site visit about the difficulty the CGR was having in accessing the accounts of government entities protected by bank secrecy rules. The representatives of the CGR reported that they were working on a bill to address this matter and expected to submit it to Congress shortly. The Committee deems it essential that the CGR have access to the accounts of government entities in order to perform the oversight functions assigned to it. It will therefore make a recommendation along those lines. (See Recommendation 1.4.4. in Section 1.4 of this report.)

[56] Fifth, the Committee considers it vital that there be cooperation and coordination between the CGR's work and its activities and those of the other organs and entities engaged in combating corruption in Peru. For that reason, the Committee underscores above all the progress made in recent years, especially the 2011 signing of the "Tripartite Framework Agreement on Inter-Agency Cooperation between the Judiciary, the Office of the Attorney General, and the Office of the Comptroller General" and, later on, of the Specific Tripartite Agreement in July 2012. The latter specifies concrete actions to be taken by each of the three bodies, whereby it is incumbent upon the CGR to form a multidisciplinary forensic audit team to verify and evaluate acts and outcomes of the management of government funds. Furthermore, in connection with the aforementioned Specific Tripartite Agreement, a "Protocol for Joint Action by the Office of the Attorney General and the CGR" was approved, pointing to areas of coordination between their respective spheres of competence, with a particular focus on offenses classified as serious, complex, and with nation-wide repercussions. In that regard, the Committee deems it necessary that the CGR move ahead with implementation of existing inter-agency agreements, by forming that multidisciplinary forensic audit team and meeting its other commitments. The Committee will formulate a recommendation on the subject (See Recommendation 1.4.5 in Section 1.4 of this report).

[57] Sixth, during the on-site visit, the representatives of the MP reported on one specific problem that hinders the agency's work. They explained that when the results of the control report are submitted to the courts, because of the delays in proceedings many of the officers who worked on those reports no longer work at the CGR or work in other areas of the agency, and that some, when called to testify, deny what they wrote in the reports, either out of fear of reprisals or because they no longer have ties with or a commitment toward the CGR. Based on the foregoing, the Committee will formulate a recommendation (See recommendation 1.4.6 in section 1.4 of this report).

[58] Finally, the Committee takes note of an important legislative initiative undertaken by the CGR regarding the defense of its officials and employees, with a view to guaranteeing the results and independence of their work by protecting them against possible reprisals such as lawsuits designed to obstruct their work (Bill N° 00098/2011-CGR).³³ In connection with legal protection for its

32. See Peru's reply to the Fourth Round questionnaire, Annex N° 4.

33. See the CGR's Activities Report (January – December 2011), p. 88. Posted at: http://www.oas.org/juridico/pdfs/mesicic4_per_cgr_inf.pdf

personnel, the Committee notes that there are no administrative career provisions in the Peruvian civil service, or detailed rules on selection procedures for public office. That institutional shortcoming is by no means exclusive to the CGR. It was, moreover, analyzed in depth in the Report from the Second Review Round of the MESICIC.³⁴

[59] It is also important to stress that the civil society organizations that took part in the on-site visit unanimously pointed to lack of institutionality as one of the principal challenges facing efforts to combat corruption in Peru. The representative of CONFIEP (the Peruvian businessmen's association), for instance, while recognizing that Peru had progressed in recent years, mentioned the fact that the Government Employment Framework Law (Law N° 28175) had still not been implemented and that the public sector still lacked both decent wages and meritocracy.

[60] In this sense, the Committee will not formulate a new recommendation on the subject, but rather, it will reiterate those put forward in the Report from the Second Review Round of the MESICIC, regarding the need for the country to have a developed administrative career system and detailed provisions governing selection to public office.

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

[61] Based on the response of the country under review to the questionnaire and the on-site visit, information was gathered regarding the results obtained by the CGR, among which the following is noted:

[62] First, Peru's response³⁵ highlights the corruption prevention actions and programs undertaken by the CGR, in particular: the "Youth Auditors" Program,³⁶ the "Prevention during the Election Period" (the "*Postula con la Tuya*" [Pay for Your Own Candidacy] and "*Únete al Control*" [Support Oversight] campaigns),³⁷ the Program to Promote Transparency,³⁸ the Program to Disseminate Public Ethics,³⁹ and the Program to Disseminate Preventive Knowledge (*Pack Anticorrupción*),⁴⁰ as well as two international conferences on combating corruption.⁴¹

[63] The Committee considers that this information proves that the CGR has carried out actions to prevent acts of corruption in keeping with its functions in this field and urges it to continue and expand those efforts.

[64] Second, as regards the principal outputs of the CGR's work, Peru's response provides the following information:⁴²

34. See the "Report on Implementation in the Republic of Peru of the Provisions of the Inter-American Convention against Corruption selected for Review in the Second Round," pp. 3, 4, 21, and 22. Posted at: http://www.oas.org/juridico/spanish/mesicic_II_inf_per.pdf

35. See Peru's reply to the Fourth Round questionnaire, pp. 31 to 38 and Figures N° 1 to 4.

36. *Ibid.*, pp. 31 to 32 and 131 to 137.

37. *Ibid.*, pp. 32 and 33.

38. *Ibid.*, pp. 33 and 34.

39. *Ibid.*, pp. 34 and 35.

40. *Ibid.*, pp. 35 and 36. Further information on the "Anticorruption Pack" can be found at: <http://apps.contraloria.gob.pe/packanticorrupcion/index.html>

41. *Ibid.*, pp. 36.

42. *Ibid.*, p. 182 (Table N° 2).

STATISTICAL DATA FROM REPORTS ON PRINCIPAL OUTPUTS
OFFICE OF THE COMPTROLLER GENERAL OF THE REPUBLIC OF PERU⁴³

OUTPUTS	2007	2008	2009	2010	2011
Oversight actions/audits	275	328	103	173	280
Prior opinion-Authorization of budgetary supplements for works	30	24	27	16	18
Prior opinion-Authorization of works supervision services	24	22	40	56	80
Prior opinion-Indebtedness operations	231	207	249	89	84
Prior opinion-Procurement of goods and services classified as a military secret	1	0	3	2	0
Rapid deployments	48	47	68	19	8
Designation of audit firms	284	257	243	342	408
Overseers' Offices	962	719	117	375	380
Audits of Sworn Statements>Returns	17	150	100	70	41
Macro reports	6	9	2	2	3
Complaint assessments	1,920	2,091	1,610	2,100	2,655
TOTAL:	3,798	3,854	2,562	3,244	3,957

Source: Management Information System-Activities Reports 2007-2008-2009-2010 - 2011(draft)

[65] Generally speaking, the information provided points, first, to a considerable reduction in CGR activities in 2009, which may be related to that year's cut in its budget as mentioned in the previous Section. CGR activities in 2010 were also fewer than in prior years, such as 2007 and 2008. Only in 2011, if projections are confirmed, would CGR outputs exceed those of 2008. Thus, the Committee reiterates both the need for the CGR to have the human and financial resources it needs in order to adequately perform its functions, as well as the recommendation formulated in the foregoing Section (See Recommendation 1.4.3 in Section 1.4 of this report).

[66] Third, Peru's report also provides the following information regarding detection of corrupt acts thanks to oversight actions:⁴⁴

[67] *"Of all the investigations carried out between 2001 and 2012, 1,695 Oversight Reports⁽⁴⁵⁾ led to judicial actions brought by the Public Prosecutor's Office in the Office of the Comptroller; of those, 1,419 were Special Reports⁽⁴⁶⁾, 139 Audit Reports⁽⁴⁷⁾, 134 concerned Affidavits, and 3 were*

43. The total number of outputs corresponds exclusively to those issued by the Office of the Comptroller General of the Republic as the lead agency of the National Oversight System (SNC); it does not include the additional outputs issued by the other agencies that make up that system (institutional oversight agencies and auditing companies) which, for the 2012 period, totaled 13,608.

44. See Peru's reply to the Fourth Round Questionnaire, p. 39.

45. *"The Oversight Reports referred to in the attached Table include Special Reports, Audit Reports, Affidavits, Technical Reports."*

46. *"Nagu [Government Audit Standard] 4.10, Preparation of the Report. Based on its field audit, the audit committee will proceed to draw up the corresponding report, taking into consideration the characteristics and structures indicated in the Government Audit Standards (...), and setting forth the final and comprehensive outcome of its audit work."*

Technical Reports. By subject matter, 576 are civil law proceedings under way and 1,119 are criminal proceedings before the Judiciary.

[68] It was also informed during the on-site visit, that through its Public Prosecutor's Office, the CGR had brought 193 civil and 342 criminal actions before the Judiciary between 2009 and July 2012. It was further informed that between January 2011 and August 2012, 61 final and notified judgments were obtained in the civil proceedings (46 in the CGR's favor and 15 against). In the criminal proceedings, in the same period, 128 final judgments were handed down (60 in the CGR's favor and 68 against).⁴⁸ The Committee also takes notes of the information provided by the CGR representatives that approximately 90% of criminal sanctions are suspended, rather than actually imposed.⁴⁹

[69] At the request of the Review Sub-Group, the CGR also presented information regarding the amount of compensation owed to the State as a consequence of the civil proceedings instituted by the CGR on the basis of special reports⁵⁰ between January 2001 and December 2011, totaling S/. 6,601,562.97. However, the CGR has no information on how much the State actually recovered. The Committee will formulate a recommendation in this regard (See Recommendation 1.4.7 in Section 1.4 of this report).

[70] Fourth, with respect to administrative/disciplinary liability, the CGR representatives said that they did not yet have information regarding the results of the power to impose sanctions assigned to the CGR by Law 29622 of April 6, 2011 and its enabling regulations,⁵¹ because it was still being implemented and the Higher Court of Administrative Liabilities was to be installed in September 2012. However, the Committee was told that, prior to Law N° 29622, when the administrative/disciplinary liability of an official was detected, the CGR used to have to inform the head of the entity concerned in order for him or her to initiate the administrative sanctions procedure, which in most cases did not result in sanctions. Often the case would simply prescribe due to the statute of limitations. The Committee will therefore formulate a recommendation that the State under review obtain objective and complete information regarding the outcomes of administrative and disciplinary proceedings instituted by the CGR (See Recommendation 1.4.8 in Section 1.4 of this report).

[71] Finally, the Committee takes notes of the *non bis in idem* principle established by Article 230.10 of Law N° 27444 ("Law on General Administrative Procedure"), which determines that a sentence and an administrative sanction for the same deed may not be imposed either consecutively or simultaneously in cases involving the same individual, deed, and grounds. The Committee is concerned about the possible ineffectiveness of the administrative proceedings and sanctions for which the CGR is responsible in cases in which an administrative offense also constitutes a punishable act and criminal proceedings are opened, once the administrative proceedings and liability are made conditional upon the statutes of limitation and outcomes of the criminal proceedings. In

47. "The Audit Report is a document established by Directive N°011-2004-CG/GDPC adopted by Office of the Comptroller General resolution N° 131-2004-CG and issued by the commission appointed to conduct a Rapid Deployment in response to a complaint to the Oversight Body; currently that Directive has been set aside and replaced by the Directive of the National System for Attending to Complaints adopted by Office of the Comptroller General resolution N° 184-2011-CG of July 20, 2011".

48. See the CGR's "PowerPoint" presentation during the on-site visit, slides 33 to 39, available at:

http://www.oas.org/juridico/ppt/mesicic4_per_presen.ppt

49. See Paragraph 152

50. Available at: http://www.oas.org/juridico/pdfs/mesicic4_per_cgr_estad.pdf

51. Approved by CGR Directive 008-2011.

other words, when criminal proceedings prescribe or are set aside or exonerated, administrative liability also ceases to exist. The Committee will formulate a recommendation regarding this matter (See Recommendation 1.4.9 in Section 1.4 of this report).

1.4. Conclusions and recommendations

[72] Based on the comprehensive review of the Office of the Comptroller General in the foregoing sections, the Committee offers the following conclusions and recommendations:

[73] Peru has considered and adopted measures intended to maintain and strengthen the CGR, as indicated in Chapter II, Section 1 of this report.

[74] In light of the comments made in that Section, the Committee suggests that the State under review consider the following recommendations:

- 1.4.1. Consider revising the last paragraph of Article 3.3.3 of Law N° 29873 with a view to not limiting the CGR's intervention in procurement contracts conducted in accordance with the specific requirements and procedures of international organizations or cooperation agencies solely in respect of the "own resources" administered by those international entities (See Section 1.1 of Chapter II of this report).
- 1.4.2. Conduct a systematic review of the State's entire regulatory framework that limits strengthening the capacities of CGR and take steps to prevent the enactment of legislation that seeks to limit anticorruption oversight (See Section 1.2 of Chapter II of this report).
- 1.4.3. Strengthen the CGR, by ensuring that it has the human and financial resources necessary for the proper performance of its functions. In addition, consider assigning the CGR a percentage of the national budget. Ensure that the CGR's capacity and structure enable it to devote sufficient efforts to executing its Annual Oversight Plans, including investigating entities with highest corruption risks and developing prevention programs, in addition to its duties to react to requests from other agencies. (See Section 1.2 of Chapter II of this report).
- 1.4.4. Consider a legislative initiative granting the CGR the power to access the accounts of government entities protected by bank secrecy rules (See Section 1.2 of Chapter II of this report).
- 1.4.5. Make progress with implementing already existing inter-agency cooperation conventions or agreements, carrying out the commitments assigned to each of the agencies in those agreements (See Section 1.2 of Chapter II of this report).
- 1.4.6. Develop mechanisms for expediting, in an effective and timely manner, the procedures leading to presentation of an audit report's findings in court. Also provide those representatives of the CGR with all the safeguards they need to give statements to the authorities in charge of the proceedings, even if these individuals are no longer employed with the CGR at the time the report is presented in court (See Section 1.2 of Chapter II of this report).

- 1.4.7. Compile information on orders to pay financial compensation to the State and on the amounts that the Treasury has actually received as a result of the civil proceedings instituted by the CGR, based on its special reports, to identify problems in the process of collecting compensation owed to the state and adopt corrective measures (See Section 1.3 of Chapter II of this report).
- 1.4.8. Prepare statistical data on investigations for administrative responsibility in the performance of duties initiated by the CGR, including the total number of cases investigated; the number of decisions taken in respect of them; the number of those decisions that resulted in a finding of responsibility and sanctions imposed; the number of times those decisions did not lead to a finding of responsibility or acquittal; and the number of decisions related to prescription of the sanction due to the statute of limitations or discharge of liability because a decision was not taken within the established time periods. (See Section 1.3 of Chapter II of this report).
- 1.4.9. Take the necessary steps so that administrative disciplinary proceedings on account of acts that may result in criminal liability are not subordinated to the criminal proceedings, so that both proceedings can run simultaneously without one depending on the outcome of the other. (See Section 1.3 of Chapter II of this report).

2. THE OFFICE OF THE ATTORNEY GENERAL

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

[75] The Office of the Attorney has a set of provisions in its legal framework, as well as other measures that refer, *inter-alia*, to the following:

[76] The Political Constitution of Peru of 1993 guarantees the autonomy and establishes the spheres of competence of the Office of the Attorney General, in particular the following: “1. To initiate of its own accord, or upon petition by a party, judicial action in defense of [the] legality and public interests protected by law. 2. To oversee the independence of the judicial organs and the proper administration of justice. 3. To represent the society in judicial processes. 4. To conduct from the beginning the investigation of offenses. With such a purpose, the National Police is obligated to fulfill the mandates of the Public Ministry within the scope of its function. 5. To apply penal action automatically or following petition by one party (...)”⁵² (Constitution, Articles 158 and 159).

[77] The Office of the Attorney General has Rules of Procedure regarding Organization and Function (ROF), approved by Office of the Public Prosecutor (*Fiscalía de la Nación*) Resolution No. 67-2009-MP-FN, which establish the organizational structure, hierarchical relations, and functions of

⁵² Likewise, with respect to the autonomy and functions of the Office of the Attorney General, that body’s Organic Law (Legislative Decree No. 152 of 1981) establishes the following: “*The Office of the Attorney General [Ministerio Público] is the autonomous organ of the State whose principal functions are to defend legality, citizens’ rights and public interests; to represent society in judicial processes, so as to defend the family, minors, the disabled, and the social interest, and to safeguard moral standards (velar por la moral pública); and to prosecute crime and ensure civil reparation. It shall also endeavor to prevent crime within the limits resulting from this law and oversee the independence of the judicial organs and the proper administration of justice, in addition to the other functions assigned to it by the Political Constitution of Peru and the Nation’s legal system.*”

the organ's structural units. The Office of the Attorney General also has Organization and Functions Handbooks (MOF), which describe each post's functions and requirements.⁵³

[78] Pursuant to Article 36 of the Organic Law of the Office of the Attorney General (Legislative Decree No. 52 of 1981), the organ comprises the Attorney General himself or herself (*Fiscal de la Nación*); the Supreme Court (criminal, civil, contentious administrative, and internal oversight) Public Prosecutors (*Fiscales Supremos*); the Superior Court (criminal, civil, family, organized crime, corruption of government officials, national – environmental, national – terrorism, and internal oversight) Public Prosecutors (*Fiscales Superiores*); the Provincial (criminal, civil, environmental, crime prevention, family, corruption of government officials, national – terrorism, organized crime, customs and intellectual property, and tax) Public Prosecutors (*Fiscales Provinciales*); the Deputy Public Prosecutors (*Fiscales Adjuntos*) and the Boards of Public Prosecutors (*Juntas de Fiscales*).⁵⁴

[79] During the on-site visit, the representatives of the Office of the Attorney General reported that Peru had been gradually implementing the new Code of Criminal Procedure (Legislative Decree N° 957 of 2004), which was now in effect in 23 judicial districts. In the Judicial District of Lima, the new Code of Criminal Procedure had been applied to crimes committed by civil servants (Articles 382 to 401 of the Criminal Code) since January 15, 2011.⁵⁵ The new Code of Criminal Procedure establishes additional powers and spheres of competence for *Fiscales Supremos Penales* and *Fiscales Superiores Penales*, such as those contained in Article 334, regarding the preparatory investigation phase.⁵⁶

[80] In the judicial district of Lima, the Office of the Attorney General has a National Public Prosecutor's Office specializing in crimes involving the corruption of government officials, as well as a supra-provincial public prosecutor's office specializing in crimes involving corruption of government officials, which have nationwide jurisdiction over offenses of this type, provided that they are serious, complex, and have national repercussions. That judicial district also has the following public prosecutor's offices specializing in corruption of government officials: 1 Coordinating Superior Court Public Prosecutor's Office (*Fiscalía Superior Coordinadora*), four Superior Court Public Prosecutor's Offices (*Fiscalías Superiores*), and two Corporate Provincial Public Prosecutor's Offices (*Fiscalías Provinciales Corporativas*).⁵⁷

53. This information is posted on the Transparency Portal of the Office of the Attorney General website (under Planning and Organization), available at: <http://www.mpfj.gob.pe/home?destino=transparencia>

54. The Organic Law of the Office of the Attorney General establishes their respective powers and spheres of competence as follows: Articles 65, 66 and 80 (*Fiscal de la Nación*); 81 to 83 (*Fiscal Supremo en lo Penal*); 90 to 92 (*Fiscal Superior en lo Penal*); 94 and 95 (*Fiscal Provincial en lo Penal*). Furthermore, in the new Code of Criminal Procedure, the *Fiscal Supremo Penal* is empowered to participate in proceedings relating to criminal charges against High-level Government Officials, which are governed by Article 454 of said Code.

55. The entry into force of the new Code of Criminal Procedure for crimes committed by civil servants was brought forward in the Judicial District of Lima by Law No. 29574 published on September 17, 2010) and Law No. 29648 (published on January 1, 2011).

56. Under the new Code of Criminal Procedure, the Public Prosecution Service is empowered to use certain tools to ensure better results in the fight against corruption. These are: (i) video-monitoring, which involves taking photographs and recording images (Art. 207); (ii) intervention of communications and telecommunications (Art. 230), which entails the tapping and recording of telephone or radio communications and other forms of communication; (iii) the seizure and confiscation of private documents (Art. 232); (iv) the lifting of bank secrecy and fiscal confidentiality (Art. 235). In addition to all this, the CPP allows prosecutors to request the advance gathering of evidence in those cases in which it cannot be deferred until trial.

57. The organizational chart of the Office of the Attorney General is posted on the Internet at <http://www.mpfj.gob.pe/ministerio/organigrama.php>

[81] The Office of the Attorney General is headed by the Attorney General, who is elected by the Board of Supreme Court Public Prosecutors.⁵⁸ The Attorney General serves for a three-year term, renewable twice only by re-election (Constitution, Article 158). Article 15 of the Organic Law of the Office of the Attorney General establishes that the Attorney General and Supreme Court Public Prosecutors shall enjoy the prerogative of entitlement to a preliminary hearing in the event of charges against them (*prerrogativa procesal del ante juicio*), it being up to the Standing Committee of Congress to accuse them before Congress of violating the Constitution or of any crime committed in the performance of their duties and up to five years after they have left office (Constitution, Article 99).

[82] It is incumbent upon the National Council of the Judiciary⁵⁹ to select and appoint Public Prosecutors, following public competition based on merit and an individual appraisal (Constitution, Articles 150 and 154.1). Public Prosecutors are appointed for an indefinite terms; however, the National Council of the Judiciary ratifies Public Prosecutors of all levels every seven (7) years.⁶⁰ Those that are not ratified cannot re-enter the Office of the Attorney General. The ratification process is separate from disciplinary measures (Constitution, Article 154.2). The National Council of the Judiciary is the body charged with dismissing Supreme Court Public Prosecutors and, at the request of the Supreme Court or the Board of Supreme Court Public Prosecutors, judges and prosecuting attorneys at all levels (Constitution, Article 154.3).

[83] Articles 27 and 29 of the Organic Law of the Office of the Attorney General establish the authority of the Attorney General to provisionally appoint public prosecutors at all levels of jurisdiction until the position is filled by regular public prosecutors appointed by the National Council of the Judiciary. Ancillary and administrative staff of the Office of the Attorney General are also appointed by the Attorney General (Organic Law of the Office of the Attorney General, Article 31). Procedures for recruiting and selecting administrative personnel are governed internally by Office of the Public Prosecutor (*Fiscalía de la Nación*) Resolution No. N° 1388-2010-MP-FN.

[84] The Organic Law of the Office of the Attorney General establishes the requirements for becoming a Supreme Court Public Prosecutor (*Fiscal Supremo*, Article 39), Superior Court Public Prosecutor (*Fiscal Superior*, Article 40) and Provincial Public Prosecutor (*Fiscal Provincial*, Article 41). The number of Superior Court Public Prosecutors in each judicial district is periodically determined by the Board of Supreme Court Public Prosecutors at the proposal of the Attorney General, taking into account the needs of the district in which they serve and the Office of the

58. The Board of Supreme Court Public Prosecutors comprises the Attorney General and the Regular Supreme Court Public Prosecutors (Organic Law of the Office of the Attorney General, Article 37).

59. An independent body composed of between seven and nine regular members elected for a five-year term. Pursuant to Article 155 of the Political Constitution of Peru, the National Council of the Judiciary is made up of the following regular members: 1. One elected by secret vote of the Supreme Court en banc; 2. One elected by secret vote of the Board of Supreme Court Public Prosecutors; 3. One elected by secret vote of the members of the country's Bar Associations; 4. Two elected by secret vote of the members of Peru's other professional associations, according to law; 5. One elected by secret vote of the chancellors of Peruvian state universities; and 6. One elected by secret vote of the chancellors of the private universities. The number of members of the National Council of the Judiciary may be increased to nine, with two additional members elected by secret vote of the Council itself from two lists of candidates: one put forward by institutions representing labor and the other proposed by representatives of the business sector.

60. Article 146 of the Peruvian Constitution guarantees the tenure and permanence of judges, provided that they behave appropriately and remain suitable for their duties. For the purposes of compliance with that requirement, all judges of the Public Prosecution Service and of the Judicial Branch must undergo a process of evaluation and ratification by the National Council of the Magistracy. In order to provide greater guarantees in these regular evaluations and to reduce the margins for discretion in ratification and removal decisions, this process contains citizen participation mechanisms that enable civil society to share its opinions regarding judges' performance.

Attorney General's budget. The same applies to the number of Provincial Public Prosecutors in each province (Organic Law of the Office of the Attorney General, Article 42).

[85] Based on information provided during the on-site visit, the National Superior Court Public Prosecutors Office specializing in corruption offenses committed by government officials has one regular public prosecutor specializing in criminal matters and two assistant superior court public prosecutors (one being a regular public prosecutor specializing in criminal matters and the other a career provisional prosecutor), while the Corporate Supra-provincial Public Prosecutor's Office specializing in corruption offenses committed by government officials has one regular provincial public prosecutor specializing in corruption offenses committed by government officials, one regular provincial public prosecutor specializing in criminal matters, two regular provincial assistant public prosecutors specializing in corruption offenses committed by government officials, and two regular provincial assistant public prosecutors specializing in criminal matters. The Lima Judicial District Superior Court Public Prosecutor's Offices specializing in corruption offenses committed by government officials have a coordinating Superior Court public prosecutor and their respective Superior Court assistant public prosecutor for coordination activities (both are career provisional prosecutors), a Superior Court public prosecutor specializing in criminal matters, and three Superior Court career provisional public prosecutors. With respect to the superior court assistant public prosecutors, there is a regular Superior Court assistant public prosecutor specializing in corruption offenses committed by government officials, two regular Superior Court assistant public prosecutor specializing criminal matters, and five provisional Superior Court assistant public prosecutors (three of whom are career prosecutors). In turn, the First and Second Corporate Provincial Public Prosecutor's Offices specializing in corruption offenses committed by government officials for the Judicial District of Lima have, overall, 13 provincial public prosecutors (six of whom are regular provincial public prosecutors specializing in corruption offenses committed by government officials, two are regular provincial public prosecutors specializing in criminal matters, and five are provisional provincial prosecutors, four of them being career prosecutors), and 41 assistant provincial public prosecutors (34 of whom are regular assistant provincial public prosecutors specializing in corruption offenses committed by government officials, for regular assistant provincial public prosecutors specializing in criminal matters, and three are provisional assistant provincial public prosecutors).

[86] The members of the Office of the Attorney General have the same rights and prerogatives, and the same obligations, as those of the same category in the Judiciary. The same disqualifications apply to both. Their appointment is subject to exactly the same requirements as those that apply to members of the Judiciary in their respective category (Constitution, Article 158). The grounds for terminating the position of Public Prosecutor are established in Article 60 of the Organic Law of the Office of the Attorney General. Furthermore, members of the Office of the Attorney General may only be transferred at their request or with their consent. (Organic Law of the Office of the Attorney General, Article 59).

[87] Public Prosecutors act independently in exercising their functions, which they are to perform in accordance with their own criteria and in the manner they deem best suited to the purposes of their institution. Since the Office is hierarchically structured, Public Prosecutors are bound by instructions issued by their superiors (Organic Law of the Office of the Attorney General, Article 5°).

[88] As regards prohibitions and disqualifications, Article 20 of the Organic Law of the Office of the Attorney General establishes a series of prohibitions for its members. Furthermore, Articles 53 and 54 of the new Code of Criminal Procedure establish the grounds on which judges can disqualify

and recuse themselves. Those same grounds also apply to members of the Office of the Attorney General (New Code of Criminal Procedure, Article 61.4). The administrative process for determining liabilities and sanctions that can be imposed on members of the Office of the Attorney General are described in the Organic Law of the Office of the Attorney General, Articles 22 and 51 to 61.⁶¹

[89] In cases in which a member of the Office of the Attorney General, instead of filing charges, decides to shelve a case or provisionally put aside the investigation, the new Code of Criminal Procedure establishes that a complainant dissatisfied with that decision may enjoin the Public Prosecutor to submit the file to the Superior Court Public Prosecutor. In addition, Directive N° 009-2012-MP-FN⁶² standardized the requirement that the time allowed for challenging a decision to shelve a complaint is three days from the date of notification of the decision, while the enjoined Public Prosecutor has five days to submit the files on the shelved investigation to the Superior Court Public Prosecutor who will review it.

[90] Training for staff of the Office of the Attorney General is provided by the Office's "Dr. Gonzalo Ortiz de Zavallos Roedel" school.⁶³ The functions performed by the School are established in Office of the Public Prosecutor (*Fiscalía de la Nación*) Resolution No. 714-2003-MP-FN and in the Rules of Procedure regarding Organization and Functions approved by Office of the Public Prosecutor (*Fiscalía de la Nación*) Resolution No. 67-2009-MP-FN.

[91] With respect to implementation of modern systems or technologies to facilitate its work, in its reply to the Fourth Round questionnaire, Peru reports that the Public Prosecutors Offices specializing in corruption offenses committed by government officials make use of technological tools, such as the Financial Management System (*Sistema de Gestión Fiscal*, SGF),⁶⁴ an electronic platform that keeps track of developments in the adversarial procedural model (*modelo procesal acusatorio*) with a view to improving the Public Prosecutors' performance, as well as other technological systems.⁶⁵ It was also reported during the on-site visit that the Office of the Attorney General has its own databases, such as the National Roster of Detainees and Persons Sentenced to Imprisonment (*Registro Nacional de Detenidos y Sentenciados a Pena Privativa de Libertad Efectiva*, RENADESPPLE)⁶⁶ and the Crime Observatory.⁶⁷ Under inter-agency agreements, it can also access other databases to help it investigate crime, such as the National Registry of Identification and Civil Status (RENIEC)⁶⁸ and the database of the National Superintendency of Public Registries (SUNARP).⁶⁹

[92] To keep the public informed of its activities, the Office of the Attorney General has a web page,⁷⁰ and other channels of communication, such as the social networks via the *Internet* (Facebook⁷¹ and Twitter⁷²) and a weekly television program (The Public Prosecutors, "Los

61. Pursuant to Article 51 of the Organic Law of the Office of the Attorney General, accountability is enforced by the governance organ of the Office of the Attorney General and the Office of the Supreme Court Public Prosecutor for Internal Oversight (*Fiscalía Suprema de Control Interno*), which is headed full time by a Supreme Court Public Prosecutor appointed by the Board of Supreme Court Public Prosecutors for a non-renewable term of three (3) years.

62. Adopted by Office of the Public Prosecutor (*Fiscalía de la Nación*) Resolution No. 2045-2012-MP-FN.

63. <http://www.mpfj.gob.pe/escuela/>

64. Website of the National Oversight System (SNC): <http://goo.gl/CSAZ8>

65. See Peru's reply to the Fourth Round questionnaire, pp. 55 and 56.

66. <http://www.mpfj.gob.pe/renadespple/index.php>

67. <http://www.mpfj.gob.pe/boletininformativo/informaciongeneral>

68. <http://www.reniec.gob.pe>

69. www.sunarp.gob.pe/

70. <http://www.mpfj.gob.pe/>

71. <https://www.facebook.com/ministerioperu?ref=ts>

Fiscales”),⁷³ videos of which are also shown on YouTube.⁷⁴ The web page of the Office of the Attorney General also has special service lines for citizens, such as a citizen oversight and citizen help line,⁷⁵ a line for filing denunciations via the WEB and by telephone,⁷⁶ a complaints/claims book,⁷⁷ etc.⁷⁸ The Committee was also told during the on-site visit that 12 offices to attend to citizens had been set up by the Office of the Superior Court Public Prosecutor for Internal Oversight (FSCI) and that the Office of the Attorney General had conducted public hearings, in which note had been taken of all kinds of demands of the general public.

[93] With respect to accounting, financial, budgetary, operational and equity-related auditing, the Office of the Attorney General has an Institutional Oversight Organ, whose functions are established in Articles 12 and 13 of its Rules of Procedure regarding Organization and Functions (ROF). Furthermore, the Office of the Superior Court Public Prosecutor for Internal Oversight (FSCI)⁷⁹ is the body responsible for overseeing discipline and ongoing evaluation of the Public Prosecutors at all levels of jurisdiction, except the Supreme Court Public Prosecutors, The FSCI has 24 decentralized offices in judicial districts all over Peru.

[94] As for guarantees that the Office of the Attorney General will have the budgetary resources it needs to operate, the Political Constitution establishes that the draft budget of the Office of the Attorney General “*is approved by the Board of Supreme Court Public Prosecutors. It is submitted to the Executive Branch and is defended there and in Congress.*” (Constitution, Article 160). Peru’s reply to the Fourth Round questionnaire⁸⁰ states that the economic and financial management of the Peruvian State is governed by the National Budget (*Presupuesto General de la República*) approved each year by Congress. The Office of the Attorney General prepares its budget based on directives issued by the Ministry of Economy and Finance (MEF) and the Office of the Director General of the Public Budget (*Dirección General del Presupuesto Público*), and in accordance with the resources needed by the Institution for fulfill its objectives and meet its targets. The proposed budget is remitted to the MEF for incorporation into the National Budget. Currently, the Office of the Attorney General is requesting an increase in its budget to cover costs associated with the gradual implementation of the new Code of Criminal Procedure. The following Table shows changes in the budget for the Office of the Attorney General since 2008.⁸¹

	2008	2009	2010	2011	2012
Modified Institutional Budget (in millions of new soles, approx.)	626	824	897	960	1.075

Source: “*Consulta amigable*” of the MEF

72. <https://twitter.com/prensafiscalia>

73. <http://www.youtube.com/user/LosFiscales/>

74. <http://www.youtube.com/tvmpf>

75. <http://www.mpfj.gob.pe/servicios/lineasupervision>

76. <http://www.mpfj.gob.pe/servicios/denunciasweb#>

77. <http://www.mpfj.gob.pe/reclamos/index.php>

78. See Peru’s reply to the Fourth Round questionnaire, p. 56.

79. See the Rules of Procedure regarding Organization and Functions of the Office of the Supreme Public Prosecutor for Internal Oversight of the Office of the Attorney General, available at: http://www.oas.org/juridico/pdfs/mesicic4_per_fis.pdf

80. See Peru’s reply to the Fourth Round questionnaire, pp. 56 and 57.

81. Information provided during the on-site visit and available at: http://www.oas.org/juridico/PDFs/mesicic4_per_pres2008.pdf

[95] Regarding coordination mechanisms for harmonizing the MP's functions with those of other oversight bodies or government authorities, in addition to the aforementioned (framework and specific) tripartite agreements signed with the CGR and the Judiciary, in July 2011 the Office of the Attorney General signed the "Inter-Agency Cooperation and Coordination Agreement between the MP and the Ministry of the Interior – Peruvian National Police",⁸² in which they committed to working on the already mutually negotiated "Manual for Developing the Investigation Plan,"⁸³ which seeks to achieve better application of the adversarial model, based on teamwork, bearing in mind the intense coordination between the Office of the Attorney General and the National Police, which perform complementary functions in investigating crimes in Peru.

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

[96] The Office of the Attorney General has a set of provisions and/or other measures relevant to the purposes of the Convention, some of which were briefly described in Section 1.1 of this report. Nevertheless, the Committee deems it appropriate to make a number of observations in relation thereto:

[97] First, as mentioned earlier with respect to the CGR, the Committee notes the absence of detailed rules regarding their selection in the Organic Law of the Office of the Attorney General.⁸⁴ As mentioned in reference to the CGR, that shortcoming is not just found in the Office of the Attorney General and it was analyzed in depth in the MESICIC Report from the Second Round of Review.⁸⁵

[98] Also, during the on-site visit, the State under review was asked to specify how many of the provisional Public Prosecutor positions (appointed directly by the Attorney General until the vacancy is covered by regular Public Prosecutors appointed by the National Council of the Judiciary) in the Offices of Public Prosecutors specializing in corruption offenses committed by government officials are occupied by career service Public prosecutors. Unfortunately, the information sent by the Office of the Attorney General⁸⁶ cited in Section 2.1 does not specify the number. The Committee takes note, furthermore, of the existence of a "Public Prosecutor Career Law," which was passed by Congress in plenary session in June 2011 and has since been waiting for promulgation by the President.

[99] In this sense, the Committee will not formulate a new recommendation on the subject. Rather, it reiterates the recommendations contained in the Report from the Second Round of Review of the MESICIC, regarding the need for the country to have an administrative career path (including a career path for Public Prosecutors) and detailed rules regarding the selection process for public office.

82. Available at: http://www.oas.org/juridico/PDFs/mesicic4_per_convenio.pdf

83. Available at:

http://www.pnp.gob.pe/documentos/COMPENDIO%20DEL%20PLAN%20DE%20INVESTIGACION_PNP_MP.pdf

84. The country under review presented the following information: "[I]t should be pointed out that under Peruvian law the National Council of the Judiciary is in charge of selection processes for public prosecutor positions. That institution appoints them according to a selection process that follows standards set by the Council itself. Furthermore, by resolution No. 2774-2012-MP-FN of October 22, 2012, the Office of the Attorney General instructed that a commission be set up to prepare the draft of a new organic law of the Office of the Attorney General, adapting its institutional workings to the changes that have arisen since its creation and incorporating the future challenges facing the prosecutorial function in fighting crime and preserving the rule of law in Peru".

85. See the "Report on the Implementation in Peru of the Provisions of the Inter-American Convention against Corruption Selected for Review in the Second Round," pp. 3, 4, 21, and 22. Available at:

http://www.oas.org/juridico/spanish/mesicic_II_inf_per.pdf

86. http://www.oas.org/juridico/pdfs/mesicic4_per_17.pdf

[100] Second, the Committee notes recent progress with respect to the establishment of Corporate Provincial Public Prosecutors Offices specializing in corruption offenses committed by Government Officials, such as the one set up in the judicial district of La Libertad in February 2011.⁸⁷ However, during the on-site visit, the Committee was told that due to budget constraints those Public Prosecutors Offices specializing in efforts to combat corruption are not present in all of Peru's judicial districts. The Committee considers it important that these Public Prosecutors Offices specializing in combating corruption should be present in the judicial districts that still lack them and that those important --currently existing and future --Public Prosecutors Offices specializing in investigating, prosecuting and bringing acts of corruption to trial be granted the human and financial resources they need for the proper performance of their functions. The Committee will formulate a recommendation in this regard (see Recommendation 2.4.1 in Section 2.4 of this report).

[101] Third, during the *on-site* visit, both the representatives of the Office of the Attorney General and participants in the meeting with representatives of civil society, as well as academics, mentioned some of the difficulties encountered by the Office of the Attorney General in combating corruption. Chief among them was the need for more budgetary resources to implement the new Code of Criminal Procedure, particularly the need for a greater number of prosecutors, prosecutorial support staff, and administrative personnel for notifications, as well as the need to expand the training provided for public prosecutors in connection with the new adversarial procedure model. Also stressed was the need to have the human and financial resources needed to carry out the necessary test. The experts unit in the Office of the Attorney General only has eight experts, whereby most of them are certified public accountants and only one is a civil engineer. In this connection, it was mentioned that two civil engineering vacancies had been advertised, but the salary offered was not attractive enough for professionals in that category, so that no competition had materialized. The Committee will formulate a recommendation in that regard (see Recommendations 2.4.2 and 2.4.3 in Section 2.4 of this report).

[102] Fourth, the Committee also had an opportunity to hear what members of the Office of the Attorney General and academics thought about the new Code of Criminal Procedure and its impact on the work of the Office of the Attorney General. One major challenge they pointed to had resulted from the shortening of procedural deadlines. For instance, the maximum time allowed for preliminary investigations was 20 days, which they considered too short. The Committee considers that Peru should review the impact of the new shorter procedural time limits in the new Code of Criminal Procedure to determine if allowing more time would be necessary, especially for more complex corruption cases, and take appropriate action. The Committee will formulate a recommendation in that regard (see Recommendation 2.4.4 in Section 2.4 of this report).

[103] Finally, the Committee found no sign of any legal obligation of the Office of the Attorney General to render accounts, in the same way as the CGR and other organs, through annual performance and activities reports disclosing its activities and outcomes, including its in-house performance, targets, and achievements. In order to foster transparency and enhance prompt accountability of the Office of the Attorney General, the Committee will formulate a recommendation in this regard (see Recommendation 2.4.5 in Section 2.4 of this report).

87. Office of the Public Prosecutor (*Fiscalía de la Nación*) Resolution No. 203-2011-MP-FN.

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

[104] Based on the response of the country under review to the questionnaire and the on-site visit, information was gathered regarding the results obtained by the Office of the Attorney General, among which the following is noted:

[105] Peru's response to the questionnaire⁸⁸ provides information on denunciations/complaints filed with Lima's offices of Public Prosecutors specializing in efforts to combat corruption between January 2011 and April 2012. Out of a total of 2,948 denunciations, 504 are being processed and 2,444 were resolved. Of the latter, 852 (35%) were shelved and 479 (20%) referred to other Public Prosecutors offices; 520 (21%) ended with reports, but the information submitted does not specify whether or not charges were brought in them; and 46 (2 percent) ended in a judgment (however, the information does not specify whether they were convictions or acquittals).⁸⁹

[106] Peru's response to the questionnaire⁹⁰ also contains a Table showing the number of crimes committed by government officials nationwide in 2007-2011. There were 74,995 offenses in all (abuse of authority [68.4%]; embezzlement [15.8%]; bribery of government officials [9%]; extortion [5.9%]; other [1%]).

[107] During the *on-site* visit, information was also requested regarding complaints/denunciations filed with the Judiciary, along with comparative data on denunciations filed in the past five years. The information sent by the Office of the Attorney General⁹¹ for the period between 01/15/2011 and 08/02/2012 shows that of the 1,724 denunciations filed and assigned in that period, 113 (6.5%) were formalized to continue with the preparatory investigation phase conducted by the Office of the Attorney General, but with the Judiciary's oversight and guarantees.

[108] First, the Committee notes the large number of complaints of cases of corruption that are shelved and the consequently low number of formalized cases that reached the Offices of the Public Prosecutors specializing in efforts to combat corruption over the past year. Although it lacks sufficient information to determine the principal reasons why the denunciations are shelved, the Committee takes note of the findings of the VII National Survey of Perceptions of Corruption in Peru 2012⁹² presented during the on-site visit. From the information provided by the Survey, it is noteworthy that only 9% of those surveyed reported a case of corruption, "*while those who did not file a complaint gave as their main reason not wanting to create more problems for themselves and the fact that nothing came of them anyway*". Another relevant point is that only 9% of those surveyed think that the Public Prosecutor's Office (*Fiscalía de la Nación*) is the institution they trust most for combating corruption. They rank it below the Ombudsman's Office (55%), the CGR (21%), and others.⁹³

88. See Peru's reply to the Fourth Round Questionnaire, p. 58.

89. The country under review presented the following information: "*it should be noted that of these 46 judgments, to date 39 were final convictions (in other words, 85% of the aforesaid 46 judgments) while 7 were acquittals (representing 15% of the total number of judgments).*"

90. See Peru's reply to the Fourth Round Questionnaire, p. 209.

91. http://www.oas.org/juridico/pdfs/mesicic4_per_17.pdf

92. Survey conducted by IPSOS Apoyo at the request of PROÉTICA (the Peruvian chapter of Transparency International). Available at: http://www.oas.org/juridico/pdfs/mesicic4_per_pro.pdf

93. The country under review provided the following information: "*[B]ased on a study (a report on which is being prepared by the Office of the Coordinating Superior Court Prosecutor for Prosecution Units specializing in crimes involving the corruption of government officials of Lima) of a sample of 15% of the complaints shelved in 2012, the preliminary conclusion was reached that around 51% of those shelved complaints corresponded to cases in which it was*

[109] Accordingly, the Committee considers it important for the Office of the Attorney General to evaluate the reasons for the perceived lack of public trust in its anti-corruption activities. It should revise the possible adverse impact of shelving complaints on citizens' perceptions of its work in this area. Where applicable, it should strive to make sure that the reasons for shelving complaints are properly substantiated and explained in language that the public can understand. At the same time, the Committee regards it as fundamental that the Office of the Attorney General, together with the other organs involved in preventing and fighting corruption in Peru, take the institutional measures as needed to promote whistleblowing and to perfect their in-house systems for receiving complaints and following up on them. The Committee will formulate a recommendation in this regard (see Recommendations 2.4.6 and 2.4.7 in Section 2.4 of this report).⁹⁴

[110] Second, despite the foregoing information that does provide certain figures on the status of corruption cases processed by the Office of the Attorney General in the aforementioned administrations, including data on how many files are still open or being processed and how many have concluded or been resolved, the information provided by the Office of the Attorney General, besides being limited to just the last year, fails to say how they were resolved (whether the report brings charges, for instance, or whether the final judgment was a conviction or an acquittal). Nor is there information on how many cases prescribed because they were not resolved in the times allowed.

[111] It should be noted that, during the *on site* visit, the Committee requested statistics on cases that had prescribed. Thus, the information supplied by the Office of the Attorney General⁹⁵ provides that: “*In Official Letters N° 32-2012-MP-FN-3° FSEDCF and 109-2012-4 ° FSEDCF/MP-FN, the Superior Court Public Prosecutors specializing in corruption offenses committed by Government Officials reported that they had no records of cases being heard that had been suspended for reasons of recalcitrance or had prescribed or been shelved without a pronouncement on the merits. Accordingly, through Official Letter N° 1177-2012-MP-FN-FSEDCF, dated 09/21/12, this information was requested from the Coordinator of the Settlement Chambers (Salas Liquidadoras) Specializing in Crimes Committed by Government Officials, in the Superior Court of Justice of Lima, whereby a reply is still pending.*”

[112] In light of the above, the Committee will formulate recommendations to the State under review in order for it to consider preparing information regarding the actions of the Office of the Attorney General in relation to corruption cases, so that in each case it will be possible to clearly establish such

not possible to corroborate the facts following the preliminary proceedings, while some 38% were shelved because the facts did not constitute recognized criminal behavior, and 11% corresponded to other causes that apply to only a limited number of shelved cases, such as complaints that had previously been set aside and were newly submitted to the Office of the Attorney General without any additional evidence with which to open an investigation. Therefore, most of the cases of shelved complaints are duly justified. With respect to the lack confidence that those surveyed expressed in the ability of Office of the Attorney General to fight corruption, this has to do with the awareness raising efforts that the institution must undertake not only regarding the effective steps it takes to uphold the law on a daily basis, but also its prevention programs, particularly targeting the youngest sectors of the population, which we will certainly increase”.

94. The country under review provided the following information: “[O]n this point, in addition to the aspects mentioned in the preceding paragraph, we believe it important to mention the public hearings that the Office of the Attorney General has been conducting in different parts of the country to collect concerns and complaints directly from the population. Such hearings have been held in La Libertad, Lambayeque, Cuzco, Tacna, and the provinces of Lima. In 2013, the institution intends to continue this program in the regions of San Martín, Arequipa, Ucayali, and Amazonas. Also in this line of action, and on the premise that our prosecutors also need to be actively involved in this reality, we have held three congresses in the regions of Huánuco, Arequipa and Piura with the aim of harmonizing among our prosecutors’ parameters of action and community outreach. Similarly, the institution has introduced a Prosecutor Induction Program, which in 2012, was implemented in the regions of Tumbes and Piura, the ongoing core objective of which will be public outreach”.

95. http://www.oas.org/juridico/pdfs/mesicic4_per_17.pdf

aspects as have been mentioned above. The Committee will also recommend designing and implementing IT systems to boost inter-agency communications and data transmission between the Office of the Attorney General, the Judiciary, and the CGR, thereby making cross-cutting information available on the status of each of the corruption cases under investigation, from the time a complaint is received until its final outcome (see Recommendations 2.4.8 and 2.4.9 in section 2.4 of this report).

2.4. Conclusions and recommendations

[113] Based on the comprehensive review of the Office of the of the Attorney General in the foregoing sections, the Committee offers the following conclusions and recommendations:

[114] Peru has considered and adopted measures intended to maintain and strengthen the Office of the Attorney General, as indicated in Section 2 of Chapter II of this report.

[115] In light of the comments formulated in that section, the Committee suggests that the State under review consider the following recommendations:

- 2.4.1. Establish Corporate Provincial Offices of Public Prosecutors specializing in corruption offenses committed by officials in judicial districts that do not yet have one and ensure that these -- existing and future -- important units specializing in the investigation, prosecution, and processing of acts of corruption, have the human and financial resources necessary to adequately perform their functions (See Section 2.2 of Chapter II of this report).
- 2.4.2. Strengthen the experts unit in the Office of the Attorney General, ensuring that it has the human and financial resources it needs to adequately perform its functions. In connection with these efforts, ensure that the salaries, benefits, and career advancement opportunities for the employees of the unit are sufficient to attract the qualified experts this office requires (See Section 2.2 of Chapter II of this report).
- 2.4.3. Broaden training for Public Prosecutors in criminal law, so that they are fully trained in the new adversarial criminal model, particularly as regards the new time-frames for proceedings (See Section 2.2 of Chapter II of this report).
- 2.4.4. Review the impact of the new shorter procedural time limits established for preliminary investigations in the new Code of Criminal Procedure to determine if allowing more time would be necessary, especially for more complex corruption cases, and take appropriate action (See Section 2.2 of Chapter II of this report).
- 2.4.5. Establish a legal obligation for the Office of the Attorney General to publish annual performance and activities reports, disclosing its activities and the results achieved, as well as the institution's in-house performance, goals and achievements (See Section 2.2 of Chapter II of this report).
- 2.4.6. Evaluate the reasons for the perceived lack of public trust in the anti-corruption activities of the Office of the Attorney General and review the possible adverse impact of shelving complaints on citizens' perceptions of its work in this area. If appropriate, ensure that the reasons for shelving complaints are properly

substantiated and explained in language that the public can understand (See Section 2.3 of Chapter II of this report).

- 2.4.7. Together with other organs involved in combating corruption in Peru, take the necessary institutional measures to promote whistleblowing with respect to acts of corruption and to perfect internal systems for receiving and following up on complaints (See Section 2.3 of Chapter II of this report).
- 2.4.8. Compile or clarify, as appropriate, statistical information regarding investigations that have commenced so as to clearly identify how many have been suspended and how many have prescribed because they were not completed in the time allowed, so as to identify challenges and recommend corrective measures (See Section 2.3 of Chapter II of this report).
- 2.4.9. Design and implement IT systems that permit inter-agency coordination and data transmission between the Office of the Attorney General, the Judiciary, and the CGR, so as to ensure that crosscutting information is available on the status of each of the corruption cases being investigated, from receipt of the complaint through to the final outcome (See Section 2.3 of Chapter II of this report).

3. THE JUDICIARY

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

[116] The Judiciary (*Poder Judicial* - PJ) has a set of provisions in its legal framework, as well as other measures, as follows:

[117] According to Article 138 of the Political Constitution of Peru, “*the power to administer justice emanates from the people and is exercised by the Judicial Power through its hierarchic organs, in accordance with the Constitution and the laws.*”

[118] The “principles and rights of the judicial function” are listed in Article 139 of the Political Constitution, which emphasizes the unity and exclusiveness of that function and independence in the exercise thereof.

[119] Article 143 of the Constitution establishes that the “Judicial Power” (hereinafter Judiciary) is made up of the judicial organs that administer justice in the name of the Nation and by organs which apply and administer it. The judicial organs are: the Supreme Court of Justice and the other courts and tribunals determined by its organic law (Supreme Decree N° 017-93-JUS), namely the Superior Courts of Justice in the judicial districts; the Specialized and Combined Jurisdiction Courts in the provinces; the first instance magistrate’s courts (*Juzgados de Paz Letrados*) in the city or town of their venue; and the offices of justices of the peace (*Juzgados de Paz*) (Organic Law of the Judiciary, Article 26).

[120] It is the duty of the Supreme Court to function as an appellate court or as one of last instance when legal action is initiated in a Superior Court or before the Supreme Court itself, in accordance with the law. (Constitution, Article 141).

[121] With respect to exceptions, the Judiciary is not competent to try members of Congress without prior authorization by Congress or its Standing Committee,⁹⁶ from the time they are elected until one month after terminating their functions, unless they are caught in the act of committing a crime (*delito flagrante*) (Constitution, Article 93). Furthermore, the Judiciary may not try any of the following authorities without the prior authorization of Congress: the President of the Republic; ministers of State; members of the Constitutional Court; members of the National Council of the Magistracy; members of the Supreme Court; superior court public prosecutors; the Public Defender of the People (Ombudsperson), or the Comptroller General of the Republic. It is the responsibility of the Standing Committee to impeach them before Congress for violations of the Constitution and for any offense they may commit in the exercise of their functions and up to five years after they have relinquished them (Constitution, Article 99).

[122] According to information received during the on-site visit, there are 31 judicial districts in Peru. The new Code of Criminal Procedure (CPP) is in effect in 21 judicial districts.⁹⁷ The Judiciary has 3 one-person criminal courts, 2 preparatory investigation courts, 3 temporary criminal courts to settle cases being processed before application of the new CPP, and a Criminal Court of Appeals. The Supreme Court has one Permanent Criminal Division (*Sala Penal Permanente*) and one Temporary Criminal Division (*Sala Penal Transitoria*).

[123] The powers and functions (*competencias*) of the Criminal Divisions of the Supreme Court are set forth in Article 34 of the Organic Law of the Judiciary. It transpired during the on-site visit that Administrative Resolution N° 136-2012-CE/PJ had redefined the competency of the highly specialized National Criminal Division (*Sala Penal Nacional*). Under the new arrangement, as of September 13, 2012, the National Criminal Division became competent to try complex corruption offense cases with national repercussions⁹⁸ (Administrative Resolution N° 136-2012-CE/PJ, Article 1°).

[124] Articles 26 to 30 of the new Code of Criminal Procedure (CPP) establish the spheres of competence of the Criminal Division of the Supreme Court, the Criminal Divisions of the Superior Courts, the Criminal Courts, the Preparatory Investigation Courts, and the First Instance Magistrate's Courts.

[125] More generally, the Committee was told during its on-site visit that the previous Code of Criminal Procedure had established two grievance mechanisms (appeal and annulment) and that, under the new Code, the grievance mechanisms are: a motion for appeal (*Recurso de Apelación*) (handled by criminal

96. Under Article 101 of the Constitution, the members of the Standing Committee of the Congress are elected by Congress. Their number tends to be proportional to that of the representatives of each parliamentary group but does not exceed 25 percent of the total number of Congressmen.

97. The Anti-Corruption subsystem under the new Code of Criminal Procedure (CPP) of 2004 has been in effect in the judicial district of Lima since January 15, 2011, pursuant to Law No. 29648 of January 1, 2011, which put the new Code of Criminal Procedure provisions for corruption offenses committed by government officials into effect in Lima.

98. Article 1 of Administrative Resolution N° 136-2012-CE/PJ establishes that “*an offense with national repercussions is one that, because of the nature of the action or its effects, and regardless of where it was committed, is decisively detrimental to or places in jeopardy particularly important legal interests (bienes jurídicos) of the criminal legal system or State funds or property that, in both cases, adversely affects the interests of the community as a whole, or transcends the scope of a single judicial district, or causes grave social alarm.*” A “complex” offense is one that has all the features described in the third section of Article 342 of the new Code of Criminal Procedure which establishes proceedings shall be considered complex when they: *a) require a significant number of investigatory acts; b) involve investigation into numerous offenses; c) have to do with a large number of defendants or victims; d) involve investigating offenses committed by members or collaborators of criminal gangs or organizations; e) require expert appraisals involving the review of a large amount of documents or complicated technical analyses; f) require undertakings of a procedural nature outside the country; or, g) require auditing the performance of legal entities or Government entities.*”

divisions of the Superior Courts) and an appeal for reversal of a lower court decision (*Recurso de Casación*) (heard by the Supreme Court). The purpose of the latter is solely to ensure that legal norms were correctly applied and that there was no violation of the Constitution or of jurisdictional principles.⁹⁹

[126] According to Article 202 of the Political Constitution, responsibility for hearing and adjudicating, in last and final instance, decisions denying habeas corpus, amparo, habeas data, or an executory orders lies with the Constitutional Court, the autonomous and independent organ that oversees adherence to the Constitution. It is composed of seven members elected¹⁰⁰ for a five-year term by the National Congress with the affirmative vote of two-thirds of the legal number of its members. (Constitution, Articles 201 and 202).

[127] Pursuant to Article 154.1 of the Political Constitution, the National Council of the Judiciary (CNM)¹⁰¹ appoints judges at all levels, following a public competitive examination and personal evaluation.¹⁰² These appointments require the affirmative vote of two-thirds of the legal number of the Council's members.¹⁰³ Judges at all levels are subject to recertification by the CNM every seven years. Those not recertified may not reenter the Judiciary or the Office of the Attorney General (*Ministerio Público*). The recertification process is independent of disciplinary measures. (Constitution, Article 154.2). It is also incumbent upon the CNM to apply the sanction of dismissal to members of the Supreme Court and, at the request of that Court, to judges at all levels. The final substantiated decision, reached after hearing the party concerned, cannot be challenged (*inimpugnable*) (Constitution, Article 154.3).

[128] Article 146 of the Political Constitution guarantees members of the Judiciary their independence, irremovability, and security of tenure as long as they evidence conduct that befits and is proper to their function, and a remuneration that secures them a standard of living worthy of their mission and rank.

[129] In addition, Articles 4 to 33 of the Judicial Career Law (Law N° 29277) establish the requirements for entering and staying in the judicial career service. Articles 34 to 64 also establish the rights and duties, prohibitions, impediments and disqualifying conflicts of interest of judges, along with the applicable disciplinary sanctions.

99. For more information on appeals, see: http://www.oas.org/juridico/pdfs/mesicic4_per_com.pdf

100. Article 201 of the Constitution establishes that for membership in the Constitutional Court, a candidate must meet the same requirements as those mandated for a member of the Supreme Court. The members of the Constitutional Court enjoy the same immunity and the same prerogatives as congressmen. They are subject to the same incompatibilities and cannot be reelected for a consecutive term. Judges or public prosecutors who have not relinquished their position for one year prior may not be elected members of the Constitutional Court.

101. The National Council of the Judiciary is composed of seven members, pursuant to the specifications of Article 155 of the Political Constitution.

102. Article 147 of the Political Constitution establishes the following requirements to qualify as a judge on the Supreme Court: 1) Be Peruvian by birth; 2) Be a citizen in the exercise of his or her rights; 3) Be over 45 years of age; and 4) Have been a superior court judge or prosecutor for 10 years or have practiced law or taught law at university level for 15 years.

103. The Consolidated Amended Text of the Rules Governing Free Competition for the Selection and Appointment of Judges and Public Prosecutors can be consulted at:

http://www.cnm.gob.pe/cnm/archivos/pdf/2012/sn/TUO_REGLAMENTO_ABIERTO2.pdf.

The Rules Governing Competition for the Promotion of Judges and Public Prosecutors are posted at:

http://www.cnm.gob.pe/cnm/archivos/pdf/2011/sn/REGLAMENTO_ASCENSO.pdf

[130] The body responsible for discipline in the Peruvian Judiciary is the Judicial Oversight Office (*Oficina de Control de la Magistratura*, OCMA),¹⁰⁴ whose activities are governed by the Organic Law of the Judiciary, its Rules of Procedure regarding Organization and Functions (approved by Administrative Resolution N° 129-2009-CE-PJ);¹⁰⁵ and, in additional respects, by the Consolidated Amended Text of the Law on General Standards and Administrative Procedures and, where applicable,¹⁰⁶ civil and criminal procedural codes, as well as by the Judiciary's Code of Ethics.¹⁰⁷ It is worth noting that, on November 27, 2012, OCMA received the Judiciary's first quality management certification, the ISO 9001:2008, which guarantees the quality of the service it provides and signifies commitment to maintaining international quality standards for the benefit of judicial system users.¹⁰⁸

[131] According to Article 82.15 of the Organic Law of the Judiciary, it is incumbent upon the Executive Council of the Judiciary to appoint the Judiciary's General Manager and the other officers referred to in the Law and its enabling regulations. With respect to training, there is a Judicial Academy (*Academia de la Magistratura*),¹⁰⁹ which forms part of the Judiciary and is the entity entrusted with the formation and training of judges and public prosecutors at all levels for selection purposes. (Constitution, Article 151, and the Organic Law of the Judicial Academy - Law N° 26335 of 1994). Furthermore, Peru's reply to the Fourth Round questionnaire¹¹⁰ provides information concerning training courses on corruption issues held in 2011 for judges and for judicial and administrative personnel.

[132] With regard to the Judiciary's technological resources and institutional strengthening, during its on-site visit the Committee was shown the 2012-2016 Strategic Information Technology Plan (PETI),¹¹¹ which establishes the technological approach to be taken by the institution, the way that approach is applied to its processes and services, and how it is implemented in the institution. The Plan also summarizes all the different stages and the outcomes or deliverables of each of those stages.

[133] With respect to the way budgetary funding is assured for its operations, the Political Constitution states that "the Judiciary presents its budget bill [proposed budget] to the Executive and defends it before Congress." (Constitution, Article 145). Furthermore, Law N° 28821 of 2006 establishes a coordination mechanism between the Judiciary and the Executive for programming and formulating the Judiciary's institutional budget. According to information provided by representatives of the Judiciary during the on-site visit, the amended institutional budget of the Judiciary amounted to the following in the past five years:

Year	Amount (in soles)
2007	951,015,434
2008	1,020,108,814
2009	1,126,901,677
2010	1,314,223,053
2011	1,341,657,957

104. Pages 60 to 75 of Peru's reply to the Fourth Round questionnaire provide detailed information regarding the functions and activities of OCMA. Its Rules of Procedure are posted at:

http://www.oas.org/juridico/PDFs/mesicic4_per_regla_OCMA.pdf

105. Available at: http://www.oas.org/juridico/PDFs/mesicic4_per_res129.pdf

106. The list of applicable rules is available at: <http://ocma.pj.gob.pe/default.aspx?view=otros&id=1>

107. Available at: http://www.oas.org/juridico/PDFs/mesicic4_per_codigo_etica.pdf

108. See: http://ocma.pj.gob.pe/default.aspx?view=prensa&id=2&cod_noticia=4381

109 <http://www.amag.edu.pe/>. The list of academic activities is available at: <http://agenda.amag.edu.pe/>

110. See Peru's reply to the Fourth Round questionnaire, p. 58.

111. Available at: http://www.oas.org/juridico/pdfs/mesicic4_per_anex2.pdf

2012	1,575,056,118
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[134] Accounting, financial, budgetary, operational and equity-related audits of the Judiciary are carried out by its Internal Oversight Committee installed in August 2009 by means of Administrative Resolution of the Office of the President of the Judiciary N° 242-2009-PPJ.¹¹²

[135] As for coordination mechanisms, the most noteworthy are the aforementioned “(“Tripartite Framework Agreement on Inter-Agency Cooperation between the Judiciary, the Office of the Attorney General, and the Office of the Comptroller General”¹¹³ and the Specific Tripartite Agreement.¹¹⁴

[136] To keep citizens abreast of its activities, the Judiciary has a website,¹¹⁵ as well as other channels of communication, such as the social networks Twitter¹¹⁶ and Facebook.¹¹⁷ It also publishes an Annual Report on the institution’s activities.¹¹⁸ The National Council of the Judiciary also has a website,¹¹⁹ containing, inter alia, information regarding its functions of selecting, appointing, evaluating and recertifying judges and on disciplinary actions. Furthermore, the Judicial Oversight Office (OCMA) also has its website,¹²⁰ which posts information on its activities and statistics on the outcomes of its work. OCMA’s website also provides information on how to file complaints or denunciations against judges and justice system personnel,¹²¹ as well as an electronic template for filing those complaints via the *Internet*¹²² and for keeping track of their status.¹²³

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

[137] The Judiciary has a set of provisions and/or other measures relevant to the purposes of the Convention, some of which were briefly described in Section 3.1 of this report. Nevertheless, the Committee deems it appropriate to make a number of observations in relation thereto:

[138] First, the Committee takes note of progress made with the gradual implementation of the new Code of Criminal Procedure, scheduled, according to the amended dates established by Supreme Decree N° 004-2011-JUS, to enter into force in various stages during 2012 and 2013 for 14 new districts, in a process to be completed in 2013. During the on-site visit, it was explained that through Laws No. 29574 and 29648, the new Code of Criminal Procedure had entered into force for corruption offenses committed by government officials in all 34 of Peru’s judicial districts, although in 10 of those judicial districts it was not yet in force for all offenses (Loreto, Ucayali, Apurímac, Huancavelica, Ayacucho, Junín, Callao, Lima, Lima Norte and Lima Sur). The Committee considers that the conclusion of this process will strengthen the Judiciary, which in this transition period has to cope with the application of two different criminal codes. Furthermore, the Committee thinks it is important to continue training judges and justice system operators in implementation of the new

112. http://historico.pj.gob.pe/CorteSuprema/Presidencia/documentos/RA_N_242_2009-P-PJ.pdf

113. Available at: http://www.oas.org/juridico/pdfs/mesicic4_per_cgr_conv2.pdf

114. Available at: http://www.oas.org/juridico/pdfs/mesicic4_per_cgr_conv1.pdf

115. <http://www.pj.gob.pe>

116. https://twitter.com/Poder_Judicial

117. <https://www.facebook.com/cortesupremafanpage>

118. <http://historico.pj.gob.pe/CorteSuprema/documentos/Memoria2011.pdf>

119. <http://www.cnm.gob.pe/cnm/>

120. <http://ocma.pj.gob.pe/>

121. <http://ocma.pj.gob.pe/default.aspx?view=servicios&id=1>

122. <http://ocma.pj.gob.pe/default.aspx?view=servicios&id=1&opcion=queja>

123. <http://ocma.pj.gob.pe/default.aspx?view=consultas&id=3>

adversarial criminal system. The Committee will formulate a recommendation in this regard (see Recommendation 3.4.1 in Section 3.4 of this report).

[139] Second, also during on-site visit, there was opportunity to hear what the representatives of the Judiciary had to say about the difficulty in achieving the budgetary autonomy required under Article 145 of the Constitution. The participants reported that the coordination mechanism between the Judiciary and the Executive for programming and formulating the Judiciary's institutional budget that had been established by Law No. 28821 after a jurisdictional dispute with the Executive Branch before the Constitutional Court, does not actually work in practice. A consensus could only be reached in respect of the 2010 and 2012 budgets.¹²⁴ The Committee also notes that the Comprehensive Justice System Reform Plan, drawn up in 2004 by the Special Congressional Committee for Comprehensive Reform of the Administration of Justice (CERIAJUS)¹²⁵ points out that *"the entities making up the justice system¹²⁶ do not have the budget appropriations they need to be able to overcome the crisis they are in. They barely receive 2.33% of the overall budget and have practically no resources for investment,"*¹²⁷ That Plan suggested amending the Constitution to endow the Judiciary with a budget equal to 4% of the overall national budget. Thus, the Committee thinks the country under review should consider making the regulatory and other adjustments needed to enable the Judiciary and, in particular, its anti-corruption sub-system, to obtain the financial, human, and operational resources it needs to fulfill its judicial functions. The Committee will formulate a recommendation in this regard (see Recommendation 3.4.2 in Section 3.4 of this report).

[140] Third, the Committee had an opportunity to hear the representatives of the Office of the Attorney General, the Judiciary, and civil society refer to the need to lengthen the statute of limitations prescription time for corruption offenses, given that the complexity of some such crimes posed a challenge for both the Attorney General's Office and the Judiciary. Thus, information was provided about a proposal, supported by the Judiciary, to amend Article 41 of the Constitution so as to include corruption offenses in the list of those for which prescription times are doubled. The current text of the Constitution restricts the doubling of prescription times to crimes against State property. The Committee considers it important that the State under review give due consideration to lengthening prescription times for corruption offenses¹²⁸ and, in that way, prevent their perpetrators from going unpunished. The Committee will formulate a recommendation in this regard (see Recommendation 3.4.3 in Section 3.4 of this report).

[141] Fourth, the Committee notes that a Judicial Career Law exists. However, it addresses the careers of judges and magistrates, but not those of other personnel in the Judiciary. Therefore, as mentioned earlier in the case of the other organs analyzed, the Committee ascertains that there are no administrative career provisions in the Peruvian civil service, or detailed rules on selection procedures for public office. That institutional shortcoming is by no means exclusive to the Judiciary.

124. See the Judiciary's additional report, p. 26. Available at: http://www.oas.org/juridico/pdfs/mesicic4_per_com.pdf

125. Available at: http://www.congreso.gob.pe/comisiones/2004/ceriajus/Plan_Nacional_ceriajus.pdf

126. The institutions in the judicial system are: the Judiciary, the Judicial Academy, the Ministry of Justice, the National Penitentiary Institute, the National Judicial Council, the Office of the Attorney General, the Constitutional Court, and the military and police courts.

127. Plan for Comprehensive Reform of the Justice System, prepared by the Special Congressional Committee for Comprehensive Reform of the Administration of Justice (CERIAJUS), p. 277.

128. Characterized in Sections II, III, and IV, Articles 382° to 401°, of Chapter II, of Title XVIII, of Book II of the Criminal Code.

It was, moreover, analyzed in depth in the Report of the Second Round of Review of the MESICIC.¹²⁹

[142] Accordingly, the Committee will not formulate a new recommendation on the subject, but, rather, it will reiterate those put forward in the Report on the Second Round of Review of the MESICIC, regarding the need for the country to have a developed administrative career system and detailed provisions governing selection to public office in all the branches of government.

[143] Finally, during the on-site visit, Peru presented the findings of the VII National Survey of Perceptions of Corruption in Peru,¹³⁰ in which the Judiciary figures as the institution perceived by 56% of those surveyed to be the most corrupt institution in Peru. Although that perception index may reflect citizen discontent with judicial services, the Committee considers it important for Peru to seriously analyze the reasons for such a high level of perceived public mistrust of an institution as important as the Judiciary and measures that might be taken to increase the public's trust in the work it does. The Committee also considers that an effort should be made to render the Judiciary's activities even more transparent¹³¹ and to strengthen its internal and external oversight bodies, the Judicial Oversight Office (OCMA), its decentralized offices, and the National Judicial Council (CNM), so that they can act not only preventively but also actually supervise judges and impose disciplinary sanctions. The Committee notes, for instance, that OCMA's budget was cut back sharply from approximately S/14 million in 2012 to S/8 million in 2013.¹³² The Committee will formulate recommendations in this regard (see Recommendations 3.4.4, 3.4.5, 3.4.6, and 3.4.7 in Section 3.4 of this report).

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

[144] Based on the response of the country under review to the questionnaire and the on-site visit, information was gathered regarding the results obtained by the Judiciary, among which the following is noted:

[145] First, during the on-site visit, the representatives of the Judiciary reported that they had not been able to compile a complete set of statistics regarding the former criminal procedure model. The system at their disposal does not show the final decision (whether the judgment was an acquittal or conviction or if the case prescribed).

[146] The information available indicates that between 2008 and August 2012, 270 corruption offense-related proceedings had been recorded, of which 176 had been resolved.¹³³

[147] During the same period, the Supreme Court of Justice received 1,777 appeals relating to corruption offense proceedings (1,735 appeals for annulment (*recursos de nulidad*) on grounds of procedural

129. See the "Report on Implementation in the Republic of Peru of the Provisions of the Inter-American Convention against Corruption selected for Review in the Second Round," pp. 3, 4, 21, and 22. Posted at:

http://www.oas.org/juridico/spanish/mesicic_II_inf_per.pdf

130. Survey conducted by IPSOS Apoyo at the request of PROÉTICA (the Peruvian chapter of Transparency International).

Available at: http://www.oas.org/juridico/pdfs/mesicic4_per_pro.pdf

131. During the on-site visit, the representatives of the Judiciary told the Committee that the Judiciary's website would be updated and would begin posting information on cases in which judgment had been handed down and would allow access to the texts of those judgments.

132. See the Judiciary's supplementary report, p. 26. Available at: http://www.oas.org/juridico/pdfs/mesicic4_per_com.pdf

133. See "Statistical data on criminal proceedings conducted by the Judiciary with respect to corruption offenses," Slide 11. Available at: http://www.oas.org/juridico/ppt/mesicic4_per_datos.ppt

violations and 42 appeals requesting reversal of a lower court judgment (*recursos de casación*). Of all the files admitted, 1,356 were resolved (1,320 appeals for annulment and 36 appeals for reversal of judgment).¹³⁴

[148] The figures for convictions were as follows: between 2007 and August 2012, there were 5,396 convictions, the bulk of which were for the following three offenses: embezzlement (3,186), collusion (593) and generic active bribery (318).¹³⁵

[149] The Committee considers that the above information serves to show that in the State under review, judicial proceedings have been brought and concluded with respect to the acts of corruption referred to in the Inter-American Convention against Corruption. However, given that the information concerning cases conducted under the former code of criminal procedure is not broken down in a way that shows how many of them have prescribed and been shelved without a decision being taken regarding them, how many resulted in acquittals and how many in convictions, the Committee will formulate a recommendation in this regard (see Recommendation 3.4.8 in Section 3.4 of this report).

[150] Second, during on-site visit, results achieved under the new Code of Criminal Procedure were shown.¹³⁶ the total number of proceedings admitted between 2011 and August 2012 was 327. Of those, 186 are under way and 139 have concluded (35 convictions, 71 terminated in advance (*terminaciones anticipadas*), 17 acquittals, 13 cases dismissed, 2 for effective collaboration with authorities (*colaboración efectiva*), 1 prescription). Of the 35 convictions, six resulted in the execution of sentences, the remainder involved suspended prison sentences.¹³⁷ Of the 71 proceedings terminated in advance, in 4 cases sentences were to be carried out, and suspended sentences were handed down for the remainder.

[151] The representatives of the Judiciary stated that the judge applies a sanction between the minimum and maximum established for each offense. Although its determination is based on the criteria of conscience and legal reasoning, the Supreme Court has considered the emission of binding supreme deeds of execution and en banc decisions¹³⁸ in order to regulate the imposition of punishments and thereby reduce the margin for discretion in sentencing.

[152] In light of the above, and bearing in mind the ample discretionary authority granted under Article 57 of the Criminal Code with respect to the imposition of suspended prison sentences, which account for 90% of the sentences handed down to those convicted of corruption under the new Code of Criminal Procedure, as well the fact that, during the on-site visit, representatives of the Office of the Attorney General, academics, and some civil society representatives all warned that the discretionary authority of judges with respect to sentencing and issuing suspended prison sentences created a sensation of impunity in society, the Committee considers it important for the country under review to give due consideration to the establishment of binding restrictive criteria for issuing suspended prison sentences for those

134. See "Statistical data on criminal proceedings conducted by the Judiciary with respect to corruption offenses," Slides 13 and 14. Available at: http://www.oas.org/juridico/ppt/mesicic4_per_datos.ppt

135. See the Judiciary's supplementary report, p. 16. Available at: http://www.oas.org/juridico/pdfs/mesicic4_per_com.pdf

136. See "Statistical data on criminal proceedings conducted by the Judiciary with respect to corruption offenses," Slides 3, 4, and 5. Available at: http://www.oas.org/juridico/ppt/mesicic4_per_datos.ppt

137. Article 57 of the Peruvian Criminal Code rules that a judge may suspend execution of a sentence provided that the following conditions are met: "1. That the sentence is imprisonment for not more than four years; 2. that the nature and type of the punishable offence and the personality of the perpetrator make it likely that this measure will prevent him or her from repeating the offence; and 3. that the perpetrator is not a repeat or habitual offender. The suspension shall be for between one and three years." Those benefiting from suspension of sentence must observe the rules of conduct imposed by the Judge, in accordance with Article 58 of the Criminal Code.

138. See *En banc* decisions (*Acuerdos Plenarios*) N° 04-2009 and N° 2-2010, available, respectively, at: http://www.oas.org/juridico/pdfs/mesicic4_per_4.pdf y http://www.oas.org/juridico/pdfs/mesicic4_per_2.pdf.

convicted of acts of corruption. The Committee will formulate a recommendation in this regard (see Recommendation 3.4.9 in Section 3.4 of this report).

[153] Third, the State under review presented information in its reply to the questionnaire,¹³⁹ and in a supplementary report sent after the on-site visit,¹⁴⁰ regarding disciplinary investigations conducted by the Judicial Oversight Office (OCMA), regarding judges and judicial personnel and the punishments imposed.¹⁴¹

[154] The Committee was shown a Table summarizing disciplinary sanctions imposed from 2006 through first quarter 2012, on judges and judicial assistants.¹⁴² Of the two most relevant sanctions for the purposes of this study, namely suspension¹⁴³ and dismissal,¹⁴⁴ the Table shows that the sanction of suspension from work was applied to 280 judges and 290 judicial assistants; proposed suspension (*la propuesta de suspensión*) was applied to 578 judges and 179 judicial assistants; proposed suspension (headquarters) was applied to 9 judges (no assistants); proposed dismissal (units) was applied to 317 judges and 224 judicial assistants; and, proposed dismissal (headquarters) was applied to 318 judges and 571 judicial assistants.

[155] Furthermore, the information contained in Peru's reply to the questionnaire shows that 1,168 investigations were under way, 30 had prescribed, and 1,659 had been shelved.¹⁴⁵

[156] The Committee considers that the foregoing information serves to show that disciplinary investigations have been brought by the Judicial Oversight Office (OCMA) against judges and judicial assistants. However, the Committee did not have at its disposal full information as to how those proceedings have ended: for instance, whether the suspension sentences and proposed dismissals were confirmed by the competent bodies (the Executive Council of the Judiciary and the National Judicial Council). Nor is there clear information regarding the significance of the data on proposed suspensions, given that Article 105.13 of the Organic Law of the Judiciary authorizes OCMA to directly impose suspension sentences in first instance. Bearing in mind that the

See Peru's reply to the Fourth Round questionnaire, pp. 205 and 206.

140. See the Judiciary's supplementary report, p. 20. Available at: http://www.oas.org/juridico/pdfs/mesicic4_per_com.pdf

141. Pursuant to Article 105 of the Organic Law of the Judiciary, OCMA is empowered to apply the disciplinary measures of admonishment (*apercibimiento*) and fines, whereby the enabling regulation must establish a dual instance guarantee and in first instance apply the disciplinary measure of suspension. Article 17.7 of the Rules of Procedure of OCMA also establishes that the head of OCMA is competent to impose, in first instance, the sanctions of admonishment, a fine, and suspension, and to propose to the National Judicial Council, through the Office of the President of the Judiciary, the sanction of separation or dismissal, as appropriate, of judges at all levels (except superior court public prosecutors, *Vocales Supremos*); as well as to propose to the Executive Council of the Judiciary the separation or dismissal, as appropriate, of justices of the peace and judicial assistants.

142. See the Judiciary's supplementary report, p. 20. Available at: http://www.oas.org/juridico/pdfs/mesicic4_per_com.pdf

143. According to Article 210 of the Organic Law of the Judiciary, "suspension shall be imposed on a judge or officer against whom an arrest warrant has been issued or charges brought with a request for a prison sentence, in proceedings on account of an intentional crime. *It shall also be imposed on a Judge who has committed a grave act that, although it is not a crime, undermines the dignity of the office or is unworthy of it in the public's mind, or if he or she commits another serious violation, after having been fined three times. The decision to suspend shall be taken by the bodies determined by this law. The suspension shall be without pay and may not exceed two months.*"

144. Pursuant to Article 211 of the Organic Law of the Judiciary, "*dismissal shall be imposed by the bodies determined in this law and shall require the affirmative vote of more than half the total number of members of the respective body. Dismissal shall be applicable to a judge whose behavior is seriously detrimental to the respectability of the Judiciary; or who has committed a grave act that, although it is not a crime, undermines the dignity of the office or is unworthy of it in the public's mind, provided that he or she has previously been suspended; or who has been convicted of a sex crime; or who has knowingly practiced despite being legally disqualified from doing so; or who has been sentenced to imprisonment for an intentional crime; or who repeats an act that is punishable with suspension; or in other cases referred to in the law.*"

145. See Peru's reply to the Fourth Round questionnaire, p. 205.

information is not broken down in such a way as to provide a full picture of the outcomes of the disciplinary investigations showing whether or not the suspension sentences and proposed dismissals were or were not confirmed by the competent bodies, the Committee will formulate a recommendation in this regard (see Recommendation 3.4.10 in Section 3.4 of this report).

3.4. Conclusions and recommendations

[157] Based on the comprehensive review of the Judiciary in the foregoing sections, the Committee offers the following conclusions and recommendations:

[158] Peru has considered and adopted measures intended to maintain and strengthen the Judiciary, as indicated in Section 2 of Chapter II of this report.

[159] In light of the comments made in that Section, the Committee suggests that the State under review consider the following recommendations:

- 3.4.1. Conclude the process of gradually implementing the new Code of Criminal Procedure throughout the country, that is to say, in the judicial districts in which it is not yet in effect, and continue training judges and judicial staff in application of the new adversarial criminal system (See Section 3.2 of Chapter II of this report).
- 3.4.2. Consider adopting the regulatory and other measures needed to ensure that the Judiciary and, in particular, its anti-corruption subsystem, are endowed with the financial, human and operational resources they need to fulfill their judicial functions. In addition, consider measures to ensure the security of judges, particularly those hearing complex corruption cases (See Section 3.2 of Chapter II of this report).
- 3.4.3. Give due consideration to lengthening prescription periods for corruption offenses so as to ensure that their perpetrators do not go unpunished. (See Section 3.2 of Chapter II of this report).
- 3.4.4. Analyze the reasons why there is so much mistrust of the Judiciary among the general public and, based on the findings of that analysis, take appropriate steps to increase citizens' trust in that institution (See Section 3.2. of Chapter II of this report).
- 3.4.5. Publish the texts of the judgments handed down by the different Criminal Chambers on the web page of the Judicial Branch, and create mechanisms to facilitate public access to that information (See Section 3.2 of Chapter II of this report).
- 3.4.6. Strengthen the internal and external oversight organs of the Judiciary, the Judicial Oversight Office (OCMA), its decentralized offices, and the National Judicial Council (CNM), endowing them with the human, financial, and operational resources they need to not only act preventively but also actually supervise judges and impose disciplinary sanctions. (See Section 3.2 of Chapter II of this report).

- 3.4.7. Specifically, step up the work of the unit in OCMA responsible for checking judges' sworn statements of income, property, and liabilities, by expanding the time allowed for disciplinary investigations and facilitating access to the bank account, tax and other information needed for its investigative work (See Section 3.2 of Chapter II of this report).
- 3.4.8. Compile disaggregated information on corruption-related criminal proceedings under the old Code of Criminal Procedure that shows how many prescribed and were shelved before a decision could be taken regarding them, and how many resulted in acquittals and how many in convictions, in order to identify challenges and recommend corrective measures. (See Section 3.3 of Chapter II of this report).
- 3.4.9. Give due consideration to establishing binding restrictive criteria regarding judges' imposition of suspended sentences for people convicted of acts of corruption (See Section 3.3 of Chapter II of this report).
- 3.4.10. Prepare comprehensive statistics on the findings of disciplinary investigations, in such a way as to show whether OCMA's suspension sentences and proposed dismissals were or were not confirmed by the competent authorities (the Executive Council of the Judiciary and the National Judicial Council), in order to identify challenges and recommend corrective measures (See Section 3.3 of Chapter II of this report).

4. THE ANTI-CORRUPTION PROSECUTOR'S OFFICE

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

[160] The Anti-Corruption Prosecutor's Office has a set of provisions in its legal framework, as well as other measures, as follows:

[161] Article 47 of the Political Constitution establishes that "the defense of state interests is the responsibility of the Public Prosecutors in accordance with the law."

[162] The "law" of the State's Legal Defense System (Legislative Decree No. 1068 of 2008) establishes, in Article 1, that the Legal Defense System of the State at the local, regional, national, supranational, and international level, in a judicial, military or arbitral venue, the Constitutional Court, administrative organs and bodies of a similar nature, arbitrations and settlements, shall be administered by the Public Prosecutors, whose governing body shall be the Ministry of Justice, and shall be represented by the President of the Council for the Legal Defense of the State.¹⁴⁶ Public Prosecutors are one set of operators of the System and they perform their functions in accordance with the different issues affecting the branches of government and entities on which they depend administratively (Legislative Decree No. 1068, Article 12).

[163] In addition to the Public Prosecutors (and deputy Public Prosecutors) of the Branches of Government and Constitutional Autonomous Agencies, Legislative Decree No. 1068 also establishes,

146. A collegiate body that directs and supervises the Legal Defense System of the State. It comprises the Minister of Justice or the person representing him, appointed by Supreme Resolution and by two members also appointed by Supreme Resolution Legislative Decree No. 1068 , Article 6.1.).

in Articles 14 and 15, two other categories: Ad-hoc Public Prosecutors and Specialized Public Prosecutors, who practice legal defense of the State in proceedings or procedures in which necessity or the seriousness of the situation so warrants (Legislative Decree No. 1068 , Article 15). One of the Specialized Public Prosecutors is the Public Prosecutor Specializing in Corruption Offenses or “Anti-Corruption Prosecutor.”¹⁴⁷

[164] The spheres of competence of the Anti-Corruption Prosecutor are set forth in Article 46 of the Rules of Procedure for the Legal Defense of the State System (adopted by Supreme Decree No. 017-2008-JUS), which establishes the scope of his or her intervention in preliminary investigations, preparatory investigations, and trials for the commission of criminal offenses contemplated in Sections I, III, and IV of Chapter II of Title XVIII of Book Two of the Criminal Code,¹⁴⁸ as a consequence of a complaint by one of the parties involved, information culled from the news regarding a criminal act, or an intervention by the Office of the Attorney General.

[165] Article 49 of the Rules of Procedure of the System for the Legal Defense of the States establishes that Public Prosecutors Specializing in Corruption Offenses shall accord priority attention to denunciations by government officials or civil servants, private citizens, and the media with respect to the aforementioned offenses; assess the evidence and reasons in support of them, and, when they see fit, channel them through to the Office of the Attorney General. Furthermore, the Anti-Corruption Prosecutor is obliged to protect the identity of whistleblowers by assigning them identification codes which he is responsible for keeping secret.

[166] The principal objectives of the Anti-Corruption Prosecutor are to pursue compensation for damages inflicted on the State through acts of corruption and to recover property or assets generated as a result of said acts. A secondary objective is to help investigate such crimes and determine who perpetrated them, in order to effectively collect civil reparation. (New Criminal Code of Procedure, Articles 11.1, 104, 105, and 399.4).

[167] The Anti-Corruption Prosecutor’s Office functions not only at its headquarters in Lima, but also at 11 decentralized Anti-Corruption Public Prosecutors’ offices nationwide (headed by a Public Prosecutor with macro-regional authority) and at 19 regional offices (run by coordinators). Also, in addition to the advocacy work performed by the Litigation Unit, the Anti-Corruption Prosecutor’s Office also has two supporting units: 1) the Information Analysis Unit (Anti-Corruption Observatory), responsible for systematization, supervision and analysis of information; and 2) the Expert Appraisal and Financial Analysis Unit (Unidad de Análisis Financiero y Pericial – UAF), which is responsible for collecting compensation and for the repatriation of assets generated by acts of corruption.

147. In 2011, for the Fujimori-Montesinos cases, the Office of the Ad-hoc Public Prosecutor and the Office of the Public Prosecutor Specializing in Corruption Offenses were merged together because the temporary nature of the former did not permits its extension over too long a period and because of the pressing need to work with a single database.

148. The offenses mentioned are: extortion (382°), improper receipt or illegal exaction (383°), collusion (384°), illegal sponsorship (385°), liability of experts, arbiters, and private accountants (386°), embezzlement (387°), embezzlement through use (388°), misappropriation (389°), unwarranted delay of payment (390°), refusal to deliver assets deposited or left in custody (391°), embezzlement by extension (392°), passive bribery for own benefit (393°), passive bribery for the benefit of a third party (394°), specific passive bribery (395°), passive corruption of court staff (396°), generic active bribery (397°), specific active bribery (398°), transnational active bribery (397°-A), negotiation incompatible with public office or abuse of office (399°), influence peddling (400°) and unlawful enrichment (401°).

[168] The Anti-Corruption Prosecutor is appointed by Supreme Resolution at the behest of the Council for Legal Defense of the State, following an evaluation,¹⁴⁹ and, administratively, answers to the Ministry of Justice (Legislative Decree No. 1068, Article 15.3). The Anti-Corruption Prosecutor may be removed at will by the Council for Legal Defense of the State, the body empowered to demand that he or she account for actions taken and to decide whether or not she or he will remain in office.

[169] The human resources needed for the Anti-Corruption Prosecutor's Office to function are proved by the personnel department of the Ministry of Justice, a body that reports to the General Office of Administration. The staff of the main and subsidiary anti-corruption prosecutors' offices are selected pursuant to the provisions of Legislative Decree No. 1057, which regulates the hiring of services. The Committee was informed during its *on site* visit that the number of staff members working in the Anti-Corruption Prosecutor's Office at the national level had increased from 85 in 2011 to 128 in 2012 and that the goal was to reach a staff of 272 by 2013.

[170] As for disciplinary matters, Articles 58 and 59 of the Rules of Procedure of the Legal Defense of the State system establish what constitutes professional misconduct and the applicable sanctions, which are imposed by the Sanctions Tribunal,¹⁵⁰ in accordance with the seriousness of each case.

[171] As for manuals, during the on-site visit, information was presented about an Institutional Organization Manual and a Procedures Manual for the Anti-Corruption Prosecutor's Office, which had been prepared and which were currently being reviewed and approved by the Council for the Legal Defense of the State. There was also mention of a protocol being prepared for the collection of compensation.

[172] As for training for the Office's staff, the fourth final additional provision of Legislative Decree No. 1068 and Articles 60 and 61 of its enabling regulation provide for the establishment of the Ministry of Justice's Public Prosecutor's Training School to promote training for professional staff performing legal defense of the State functions, as well as to offer brush-up courses for Public Prosecutors.

[173] To keep citizens abreast of its activities, the Anti-Corruption Prosecutor's Office has a *Web*¹⁵¹ page on which it posts information regarding the institution, such as its First Management Report.¹⁵² Furthermore, the Ministry of Justice's *Web* site keeps, *inter alia*,¹⁵³ a Roster of Persons Owing Compensation for Corruption Offenses against the State,¹⁵⁴ for the public to consult.¹⁵⁴ The Committee was also told during the *on site* visit about public hearings in which complaints and denunciations are received and that the current Anti-Corruption Prosecutor had ample contact with the press.¹⁵⁵

149. To be appointed, the Anti-Corruption Prosecutor, like the other Specialized Public Prosecutors, must meet the same requirements as those for the Public Prosecutors of the Executive Branch, which are established by Article 12 of Legislative Decree No. 1068.

150. This Tribunal comprises the Vice Minister of Justice, the Public Prosecutor of the Presidency of the Council of Ministers and the most senior Public Prosecutor, with the Public Prosecutors of the Judiciary and the Legislature acting as alternates. They will pronounce on the complaints or denunciations brought to their attention by means of a resolution stating the reasons for their position (Legislative Decree No. 1068, Article 26.2).

151. <http://www.minjus.gob.pe/corrupcion/>

152. <http://www.minjus.gob.pe/ultimas-noticias/primer-informe-del-gestion-procuraduria-anticorrupcion/> .

153. http://pisaq.minjus.gob.pe:8080/sisca_web/Login2Action_verWeb

154. http://pisaq.minjus.gob.pe:8080/sisca_web/DeudoresWebAction_verWeb

155. <http://www.larepublica.pe/30-07-2012/procurador-arbizu-estamos-investigando-los-ingresos-de-fujimori-para-lograr-pago-de-reparacion-civil>

[174] For accounting, financial, budgetary, operational and equity-related auditing, the Anti-Corruption Prosecutor's Office has an "Internal Oversight Committee of the Ministry of Justice," established in November 2011 by Ministerial Resolution No. 0241-2011-JUS.¹⁵⁶

[175] Being attached to the Ministry of Justice, the Anti-Corruption Prosecutor's Office is funded by Public Treasury allocations to the justice sector. The third final additional provision of Legislative Decree No. 1068 also provides that 50% of the compensation owed to the State as a result of corruption offense proceedings is to be paid to the entity against which the corrupt act was committed and 50% to the Ministry of Justice. During its on-site visit, the representatives informed that half the resources paid to the Ministry of Justice are earmarked for the Anti-Corruption Prosecutor's Office and that that source of funds would increase notably in 2013. It was also told that special funds have also been allocated, via Emergency Decree, for the decentralized Public Prosecutors' Offices. The following Table shows the Anti-Corruption Prosecutor's Office's budget for the past two years:¹⁵⁷

SOURCES OF FINANCING	2011 BUDGET	2012 BUDGET
Regular funding	5,417,276	5,430,839
Directly Collected Funds	384,463 ¹⁵⁸	624,463
Grants and Transfers	-	3,780,000
TOTAL S/.	5,801,739 ¹⁵⁹	9,835,302

[176] Regarding coordination mechanisms for harmonizing the functions of the Anti-Corruption Prosecutor's Office with those of other oversight bodies or government authorities, during the on-site visit it was reported that there were non-institutionalized cooperation mechanisms, such as the steps taken by the Litigation Unit to coordinate with the Office of the Attorney General and the Judiciary. The Anti-Corruption Prosecutor's Office collaborates with the Office of the Attorney General, which is the only body that can bring criminal charges, by conducting its own investigations before placing its findings at the disposal of that organ. The representatives also informed about non-institutionalized coordination with the Financial Analysis Unit of the tax authority, DUNAT, and that agreements were about to be signed that would allow access to a number of records, including the migration and convicted persons rosters.

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

[177] The Anti-Corruption Prosecutor's Office has a set of provisions and/or other measures relevant to the purposes of the Convention, some of which were briefly described in Section 4.1 of this report. Nevertheless, the Committee deems it appropriate to make a number of observations in relation thereto:

[178] First, during the on-site visit, there was opportunity to hear both the views of representatives of the Anti-Corruption Prosecutor's Office and those of an investigator, who presented the findings of a critical study of that Office's situation.¹⁶⁰ It became apparent that, although Article 15 of Legislative

156. <http://sistemas3.minjus.gob.pe/sites/default/files/documentos/controlinterno/RM%20241-2011.pdf>

157. http://www.oas.org/juridico/pdfs/mesicic4_per_pres.pdf

158. Value corrected by the country under review.

159. Value corrected by the country under review.

160. "A Critical Look at the Anti-Corruption Prosecutor's Office [*La procuraduría anticorrupción en perspectiva crítica:*] Compensation / investigation / information system." [*Reparaciones civiles / investigación / sistema de información*"] (First

Decree No. 1068 establishes that Specialized Prosecutors should act in cases of special need and/or gravity, the enabling regulation of that Decree has granted the Anti-Corruption Prosecutor's Office broad mandate to investigate and collect civil reparation (compensation) for all acts of corruption contemplated in Sections II, III, and IV of Chapter II of Title XVIII of the Second Book of the Criminal Code, without standardized and officially established criteria for determining the gravity or importance of cases. As a result, in a large portion of cases litigated by the Anti-Corruption Prosecutor's Office the amount of compensation to be collected is minimal.¹⁶¹

[179] On this matter, the representatives of the Anti-Corruption Prosecutor's Office explained that they had striven to adopt, wherever possible, a strategic approach to cases, classifying each of them on technical grounds in one of four categories: A, B, C, and D. "A" cases were those deemed highly important and complex, due to the importance of the government official involved and/or the impact on the media. "B" cases entailed serious harm or economic injury to the State. "C" and "D" cases involved low-ranking officials, low amounts of compensation, and few or no media repercussions.¹⁶²

[180] During the on-site visit, information was presented that, at the Lima headquarters of the Anti-Corruption Prosecutor's Office, "A" and "B" cases accounted for 24% of all cases, while cases "C" and "D" accounted for 76%.¹⁶³ Similar percentages are found in the decentralized offices: 28% of "A" and "B" cases and 72% of "C" and "D" cases.¹⁶⁴

[181] According to the findings of the Management Report of the Anti-Corruption Prosecutor's Office, this situation means that a considerable portion of the Office's human and financial resources are devoted to investigating "micro-corruption" cases, involving reparation payments of, in some cases, less than US\$2,200.¹⁶⁵ In the opinion of the representatives of the Anti-Corruption Prosecutor's Office and of the investigator that was interviewed, this situation poses a major challenge for the Office given that it is not always possible to elicit evidence in such cases (of "one person's word against another's") and the amount of compensation to be paid, if the case is won by the State, is tiny; in other words, the State's investment is very high when compared to the chances of success and of effective collection of minimal amounts of reparation. Furthermore, the state property-related investigation and financial intelligence tools and techniques at the disposal of the Anti-Corruption Prosecutor's Office are not tailored to these kinds of cases, which leave no traces in the financial system and generally do not involve obvious enrichment of those who commit these acts of corruption.

[182] In light of the above, the Committee considers that the State under review needs to assess the situation and determine what kinds of cases should be within the sphere of competence of the Anti-

Management Report of the Anti-Corruption Prosecutor's Office), available at: <http://www.minjus.gob.pe/wp-content/uploads/2012/06/anticorrupcion-Primer-Informe-situacional.pdf>

161. *Ibid.*, p. 6-7

162. For further details on this classification, see the First Management Report of the Anti-Corruption Prosecutor's Office: "A Critical Look at the Office of the Anti-Corruption Prosecutor [*La procuraduría anticorrupción en perspectiva crítica:*] Compensation / investigation / information system." [*Reparaciones civiles / investigación / sistema de información*"] available at: <http://www.minjus.gob.pe/wp-content/uploads/2012/06/anticorrupcion-Primer-Informe-situacional.pdf>

163. See slide 16 of the presentation by the Anti-Corruption Prosecutor's office delivered during the on-site visit. Available at: http://www.oas.org/juridico/ppt/mesicic4_per_p1.ppt

164. *Ibid.*, slide 17.

165. "A Critical Look at the Office of the Anti-Corruption Prosecutor [*La procuraduría anticorrupción en perspectiva crítica:*] Compensation / investigation / information system." [*Reparaciones civiles / investigación / sistema de información*"] (First Management Report of the Anti-Corruption Prosecutor's Office), available at: <http://www.minjus.gob.pe/wp-content/uploads/2012/06/anticorrupcion-Primer-Informe-situacional.pdf>

Corruption Prosecutor's Office and which should be addressed by the institutional Prosecutors (see Recommendation 4.4.1 in Section 4.4 of this report).

[183] Second, the Committee has ascertained the non-existence of arrangements or agreements with other organs and entities that would allow the Anti-Corruption Prosecutor's Office to access important rosters and databases that could assist its endeavors. The Committee will formulate a recommendation in this regard (see Recommendation 4.4.2 in Section 4.4. of this report).

[184] Third, the Committee takes note of the following specific difficulties facing the Anti-Corruption Prosecutor's Office, that were brought to its attention during the *on site* visit : 1) Difficulty accessing the information held by the Financial Intelligence Unit of the Superintendency of Banks and Insurance; 2) The fact that some judges do not allow challenges to acquittals; and 3) Resistance to participation in incidents of a personal nature during the proceedings, such as preventing some from leaving the country, for example. The Committee will offer recommendations in that regard (see Recommendations 4.4 3 and 4.4.4 in Section 4.4 of this report).

[185] Fourth, the Committee also takes note of progress shown during its *on site* visit regarding preparation of the Institutional Organization Manual, the Procedures Manual of the Anti-Corruption Prosecutor's Office, and the Protocol for Collection of Reparation Payments. The Committee considers that it is important to complete the preparation of these documents so that the Anti-Corruption Prosecutor's Office has at its disposal job descriptions for its staff and documented procedures for carrying out its work that will strengthen the Office's institutional capacity. The Committee will formulate a recommendation in that regard (see Recommendation 4.4 5 in Section 4.4 of this report).

[186] Fifth, regarding technical cooperation needs, the Anti-Corruption Prosecutor's Office pointed to its need for support in designing and implementing software for inputting and processing information in a single nation-wide database.¹⁶⁶ In the Office's opinion, this will allow swift and timely detection of similarities between acts of corruption to be investigated. The Committee will formulate a recommendation in that regard (see Recommendation 4.4 6 in Section 4.4 of this report).

[187] Sixth, the Committee welcomes the fact that Legislative Decree No. 1068 establishes that 50% of the compensation to be paid to the State as a result of corruption case proceedings is earmarked for the entity in which the wrongdoing was committed and 50% for the Ministry of Justice, and that, by a regulatory provision,¹⁶⁷ 25% of the latter percentage be allocated to the Anti-Corruption Prosecutor's Office. Nevertheless, the Committee considers that, as a way of boosting the institutional strength and furthering the important work of the Anti-Corruption Prosecutor's Office, it would be useful to establish by law that that minimum percentage of civil reparation payments in corruption cases should be earmarked for the Anti-Corruption Prosecutor's Office, and to guarantee that that agency maintain its autonomy and the human and financial resources necessary for the proper fulfillment of its functions. The Committee will formulate a recommendation in that regard (see Recommendation 4.4 7 in Section 4.4 of this report).

[188] Finally, as mentioned earlier with respect to the other organs analyzed, the Committee notes that there are no administrative career provisions in the Peruvian civil service, or detailed rules on selection procedures for public office. That institutional shortcoming is by no means exclusive to the

166. See Peru's response to the Fourth Round questionnaire, p. 81.

167. Article 3(a) of Executive Decree N° 009-2010-JUS.

Anti-Corruption Prosecutor's Office. It was, moreover, analyzed in depth in the Report from the Second Review Round of the MESICIC.¹⁶⁸

[189] Accordingly, the Committee will not formulate a new recommendation on the subject, but, rather, it will reiterate those put forward in the Report on the Second Round of Review of the MESICIC regarding the need for the country to have a developed administrative career system and detailed provisions governing selection to public office.

[190] It is worth noting in this regard that during the on-site visit, the civil society representatives unanimously acknowledged that, relatively speaking, progress had been made over the past year in fighting corruption, especially with respect to actions undertaken by the Anti-Corruption Prosecutor's Office, but they attributed that progress more to the commitment of the staff than to any real institutional strengthening of that Office.

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

[191] Based on the response of the country under review to the questionnaire and the on-site visit, information was gathered regarding the results obtained by the Anti-Corruption Prosecutor's Office, among which the following is noted:

[192] The response of the State under review¹⁶⁹ provides the following information regarding results achieved thanks to the work of the Lima Office of the Public Prosecutor Specializing in Corruption Offenses (PPEDC):

Year	Number of proceedings in which the PPEDC is involved	Number of cases under way	Number of cases shelved by the PPEDC	Number of cases suspended for any reason	Number of cases that have prescribed
2008	No information available (n.a.)	(n.a.)	(n.a.)	(n.a.)	(n.a.)
2009	1080	(n.a.)	483	(n.a.)	(n.a.)
2010	1102	(n.a.)	508	(n.a.)	(n.a.)
2011	1318	1.219	1169	(n.a.)	0
2012*	614	1.833	121	72	0

Source: Records Unit of the PPEDC Information as of May 18, 2012.*

Amount of compensation (reparation) obtained for crimes against government administration (Includes the Office of the former Ad Hoc Public Prosecutor for the Fujimori-Montesinos cases)

Year	Total (in New Soles)
2007	3,026,73 9

168. See the "Report on Implementation in the Republic of Peru of the Provisions of the Inter-American Convention against Corruption selected for Review in the Second Round," pp. 3, 4, 21, and 22. Posted at: http://www.oas.org/juridico/spanish/mesicic_II_inf_per.pdf

169. See Peru's response to the Fourth Round questionnaire, p. 80.

2008	1,287,461
2009	878,109
2010	3,185,690
2011	1,338,994

Source: Financial Analysis Unit of the PPEDC.

[193] During the on-site visit, the representatives of the Anti-Corruption Prosecutor's Office explained the reasons for the apparently high number of cases shelved in 2011 and for the patchy data available in previous years. They explained that there was no database on the actual number of corruption case proceedings involving the legal defense of the State and that there was no reliable information on outstanding and settled reparation payments, on the judicial status of persons charged with corruption, or on how, with precarious logistics, cases could be distributed among so few attorneys. They further explained that the situation had led to the establishment of the supporting and strategic litigation units mentioned earlier in Section 4.1., the Information Analysis Unit (Anti-Corruption Observatory), and the Expert Appraisal and Financial Analysis Unit Financial, although the work of reorganizing archives and screening of cases is still under way. Despite the above-mentioned difficulties, data were provided during the on-site visit, based on the information of the Financial Analysis Unit of the Anti-Corruption Prosecutor's Office, on actual amounts collected as compensation. They also informed that the total amount of reparation ordered (by both the now defunct Ad-hoc Prosecutor's Office and the Specialized Prosecutor's Office) was S./ 1,078,291,130 as of July 2012, while the amount actually collected and recovered by the State in the same period was just S./ 12,278,945, in other words, approximately 1% of the total reparation payments ordered was in fact recovered.¹⁷⁰

[194] Information was also provided on the efforts currently being undertaken by the Anti-Corruption Prosecutor's Office with respect to payment of compensation in 2011 and 2012. Collections between January and September amounted to approximately S./(new Soles) 976,377 in 2011 and S./1,873,507 in 2012 (same period): an increase of 91.88%. The representatives also informed that that increase was due to a resuscitation of cases in which judgments were being enforced (a strategy for ensuring actual collection of compensation by offering scheduled installment options) and to a reactivation of proceedings for the repatriation of ill-gotten gains that had been suspended. According to the information provided, US\$ 185,160,184 had been repatriated, compared to US\$ 171,210,587 between 2001 y 2006; US\$ 13,925,782 between 2006 and 2011; and US\$ 23,815 between 2011 and July 2012. It was expected that a further US\$80,000 would be expatriated from Panama in 2012, together with approximately US\$15 million from Luxembourg, during 2013.¹⁷¹

[195] Finally, information was received concerning two sets of regulations that should have a favorable impact on collection of reparations ordered by the courts: 1) the recently approved regulations (Supreme Decree 003-2012-JUS), establishing that prison benefits shall only apply once a person convicted of acts of corruption has paid off his or her reparation debts; and 2) the bill establishing the "civil death" of persons convicted of corruption that do not make the reparation to which they were sentenced: the idea being to make it difficult or impossible for those persons to participate in business, banking or financial activities and thereby provide an incentive to pay reparation.

170. See slide 19 of the presentation by the Anti-Corruption Prosecutor's office delivered during the *on site* visit. Available at: http://www.oas.org/juridico/ppt/mesicic4_per_p1.ppt

171. *Ibid.*, slide 20.

[196] With the above in mind, the Committee takes note of the progress made by the Anti-Corruption Prosecutor's Office over the past two years, in the sense of efforts to improve records of what the Office does and thus have reliable information on the outcomes of its work, and to implement strategies for recovering funds. That led to an increase in reparation payments in 2011 and 2012, and to a probably marked increase in the repatriation of assets in 2012. Nevertheless, the Committee considers that it is still necessary, as mentioned in Section 4.2., to strengthen the Office institutionally and to prioritize the (strategic litigation) cases within the sphere of competence of the Anti-Corruption Prosecutor's Office so as to achieve a more substantial increase in actual collection of the reparation payments ordered, which is still minimal (approximately 1% of payments ordered). Furthermore, the Committee considers that the Anti-Corruption Prosecutor's Office needs to continue screening and organizing the Office's archives, with a view to obtaining more reliable and complete information regarding its achievements in the decentralized offices as well as at its Lima headquarters. The Committee will formulate a recommendation in that regard (see Recommendations 4.4.8 and 4.4.9 in Section 4.4 of this report).

4.4. Conclusions and recommendations

[197] Based on the comprehensive review of the Anti-Corruption Prosecutor's Office in the foregoing sections, the Committee offers the following conclusions and recommendations:

[198] Peru has considered and adopted measures intended to maintain and strengthen the Anti-Corruption Prosecutor's Office, as indicated in Section 2 of Chapter II of this report.

[199] In light of the comments formulated in that section, the Committee suggests that the Republic of Peru consider the following recommendations:

- 4.4.1. Evaluate the current status of the cases for which the Anti-Corruption Prosecutor's Office is responsible and consider taking legislative or other measures to determine what type of cases, based on their importance and/or seriousness, should fall within the sphere of competence of that Specialized Prosecutor's Office and which should be addressed by the institutional Public Prosecutors (see Section 4.2 of Chapter II of this report).
- 4.4.2. Where appropriate, establish or strengthen inter-agency coordination mechanisms with other oversight organs, state entities, or authorities at all levels and spheres of the State, with which the Anti-Corruption Prosecutor's Office should be in contact if it is to perform its functions appropriately, through such measures as it deems fitting, such as signing arrangements or agreements that enable the Anti-Corruption Prosecutor's Office to access important records and databases that help it perform its functions (See Section 4.2 of Chapter II of this report).
- 4.4.3. Consider making the regulatory or other adjustments needed to allow the Anti-Corruption Prosecutor's Office access to pertinent information of the Superintendency of Banks and Insurance's Financial Intelligence Unit (See Section 4.2 of Chapter II of this report).
- 4.4.4. Consider making the regulatory or other adjustments needed to empower the Anti-Corruption Prosecutor's Office to challenge acquittals in compensation (reparation)

cases and to consider appropriate measures to allow that Office to participate in motions of a personal nature in the proceedings (See Section 4.2 of Chapter II of this report).

- 4.4.5. Adopt the Institutional Organization Manual, the Procedures Manual, and the Protocol for Collecting Compensation (Reparation) of the Anti-Corruption Prosecutor's Office, and other related documents that help strengthen the Office as an institution (See Section 4.2 of Chapter II of this report).
- 4.4.6. Foster the necessary arrangements with other States and cooperation agencies to provide the Anti-Corruption Prosecutor's Office with the technical cooperation needed to design and implement software that records and processes information in a single nation-wide database, in such a way as to permit swift and timely detection of similarities between acts of corruption to be investigated (See Section 4.2 of Chapter II of this report).
- 4.4.7. Strengthen the Anti-Corruption Prosecutor's Office, ensuring that it maintains its autonomy and the financial and human resources necessary for the proper fulfillment of its functions, and also seeking the direct allocation, under a provision of law, of a percentage of the civil reparations paid to the State in corruption cases. Ensure that gains made by personal leadership as well as processes for further advancement of the office are institutionalized (see Section 4.2 of Chapter II of this report).
- 4.4.8. Step up efforts by the Anti-Corruption Prosecutor's Office to increase actual recovery of reparation payments ordered by the courts, while making the regulatory and operational changes needed to fortify the Office as an institution and giving due consideration to legislative initiatives that support its work of recovering assets and property for the Treasury (see Section 4.3 of Chapter II of this report).
- 4.4.9. Move ahead with the screening and organization of the Office's archives so as to obtain more reliable and complete information regarding the achievements of the Anti-Corruption Prosecutor's Office, not only with respect to its headquarters in Lima but its decentralized offices as well (see Section 4.3 of Chapter II of this report).

III. BEST PRACTICE

[200] In accordance with Section V of the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round* and the *Format* adopted by the Committee for the Reports of said Round, reference is made to the best practice identified by the country under review, which it has said it wishes to share with the other member States of the MESICIC, as it could be beneficial to them:

- Regarding the Office of the Comptroller General of the Republic (CGR):

[201] “*Young Auditors Program*¹⁷²”: The best practice in the “Young Auditors Program” consists of civic surveillance activities by pupils in their last years of secondary school, who, accompanied by their teachers, prepared, carried out and reported the outcomes of “schoolchildren’s oversight” (“*veedurías escolares*”) of their educational establishments, the Local Education Management Unit (UGEL), the Municipal Government, and local police stations. The Program has three components (capacity building, the development of teaching materials, and surveillance activities).

[202] More information in this connection is available in the Response of the country under review, Annex II, pp. 131-138.

IV. FOLLOW-UP ON PROGRESS AND NEW AND RELEVANT INFORMATION AND DEVELOPMENTS WITH REGARD TO THE IMPLEMENTATION OF RECOMMENDATIONS SUGGESTED IN THE COUNTRY REPORT IN THE FIRST ROUND OF REVIEW

[203] The Committee will refer below to the progress, information, and new developments made by Peru in relation to the recommendations and measures suggested by the Committee for implementation in the Report of the First Round, and with respect to which the Committee deemed that additional attention was required in the Reports from the Second and Third Rounds,¹⁷³ and shall, as appropriate, take note of those that have been satisfactorily considered and those that require additional attention from the country under review. In addition, where appropriate, it will address the continued validity of those recommendations and measures and, as applicable, restate or reformulate them, in accordance with provisions contained in section VI of the Methodology adopted by the Committee for the Fourth Round of Review.¹⁷⁴

[204] The Committee will also take note in this section of the Report of the difficulties in implementing the aforementioned recommendations and the measures to which the country under review has drawn attention, as well as of its technical cooperation needs to that end.

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE THEM (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)

1.1. Standards of conduct to prevent conflicts of interests and mechanisms to enforce them

Recommendation:

Strengthen the implementation of laws and regulations governing conflicts of interest.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Analyze possible situations of conflict of interest that could arise from the constitutional authorization (articles 92 and 126 of the Constitution of Peru) that permits a member of congress*

172. An informative video on the Program is available at: http://www.oas.org/juridico/mesicic4_peru_video2.avi

173. Available at: <http://www.oas.org/juridico/english/per.htm>

174. The list of recommendations that still require additional attention or which have been reformulated following this analysis, have been included as Annex 1 to this Report.

to be appointed as a Minister of State, and empowers such Member to take part in congressional voting; it would be advisable for such Member to abstain on matters directly connected with their executive function.

[205] In its reply,¹⁷⁵ the State under review provides information and reports on new developments with respect to the foregoing measure, of which, the Committee notes, as steps that contribute to progress in implementation of the measure, the following:

[206] *“Here, it is worth pointing out that, although currently there is no provision expressly regulating conflicts of interest in the exercise of congressional functions, two (2) bills have been submitted that aim to regulate it.*

[207] *Thus, Bill (Proyecto de Ley) N° 497-2011/CR proposes amending Article 4.e of the Code of Parliamentary Ethics so as to include a ban on congressmen participating in the discussion and adoption of laws with respect to which they have a conflict of interest. The bill states that congressmen have a duty to act as follows:*

[208] *‘e) In the discussion of topics and investigations and/or in the debating or adoption of laws and/or legislative resolutions which could favor personal or family interests of an economic or other nature, congressmen shall explicitly acknowledge those ties and permanently abstain from participating therein.’*

[209] *. Similarly, Bill N° 242-2011/CR, prohibits legislators from exercising the legislative functions contemplated in Article 4 of the Code of Parliamentary Ethics in respect of matters they are duty-bound to recuse themselves because of a conflict of interest.*

[210] *Both these bills are currently with the Committee on the Constitution and Rules of Procedure, the body charged with issuing an opinion on them (...)*

[211] The Committee takes note of the steps taken by the State under review to advance with implementation of measure (a) of the recommendation in Chapter IV, Section 1.1 of this report and of the need for the State to continue giving attention thereto, bearing in mind that both the aforementioned bills have not yet completed the procedures for becoming law.

Measure c) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Evaluate the possibility of amending the First Additional and Final Provision of Law 27815 (Code of Ethics in Public Administration Act) to eliminate its supplemental character in the case of lower ranking provisions.*

[212] In its reply,¹⁷⁶ the State under review provides the following information regarding the aforementioned measure:

[213] *“Here, it should be pointed out that the supplemental character referred to in the First Additional and Final Provision derives from the fact that there are hiring/procurement systems in the country that, pursuant to special laws and their respective enabling regulations (labor regime 276,*

175. See Peru’s reply to the Fourth Round Questionnaire, pp. 83 and 84.

176. See Peru’s reply to the Fourth Round Questionnaire, p. 85.

728 or Administrative Procurement of Services), provide for specific disciplinary procedures that differ in terms of prescription time, competent body, and type of sanction from the type of disciplinary procedure provided for in the Code of Ethics.

[214] Thus, the National Civil Service Authority (SERVIR) has established that when a deed is classified as both a breach of ethics and a breach of discipline only the regulations regarding the imposition of sanctions for breaches of discipline must be taken into account.¹⁷⁷

[215] Furthermore, it should be pointed out that the aforementioned supplemental character does not count in respect of lower-ranking norms, but only with respect to provisions with the force of law, developed in the respective enabling regulations and in in-house workplace rules of procedure, both of which are framed by applicable law.

[216] It is worth adding that, faced with the various different kinds of breaches of an ethical nature, SERVIR is preparing, pursuant to the Second Temporary Provision of the Framework Law on Government Employment, a bill on Ethics, Conflicts of Interest and Responsibilities (Ética, Incompatibilidades y Responsabilidades)¹⁷⁸, with a view to grouping together the various provisions on ethical breaches and making all government employees subject to a single procedure, regardless of the regime under which they were hired.¹⁷⁹

[217] The Committee takes note of the step taken by the State under review to advance with implementation of recommendation (c) of Chapter IV, Section 1.1 of this report and of the need for the State to continue giving attention thereto, given that the aforementioned new ethics bill is still being prepared. The Committee also notes that Article 10.3 of the current Code of Ethics in Public Administration Act establishes that “The sanctions applicable for contravening this Code do not entail exemption from the administrative, civil and criminal liabilities established by existing provisions.”

Measure g) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- Clearly define, for each position, the technical and professional requisites to be met by those appointed to positions of confidence (Law 28175, article 4(2)).

[218] In its reply,¹⁸⁰ the State under review provides information and reports on new developments with respect to the foregoing measure, of which, the Committee notes, as steps that contribute to progress in implementation of the measure, the following:

[219] “(...) In this regard, it is to be noted that the Office of the President of the Council of Ministers has issued two (2) Supreme Decrees that contain guidelines to assist government administration entities with the preparation of Rules of Procedure regarding Organization and Function (ROF) and

177. Resolution N° 03340-2012-SERVIR/TSC-PRIMERA SALA, of May 15, 2012, paragraph 15.

178. One precedent for the bill being prepared is bill (Proyecto de Ley) N° 4683/2010-PE.

179. Law N° 27815, the Code of Ethics in Public Administration Act and its enabling Regulation, adopted by Supreme Decree N° 033-2005-PCM; Law N° 27588, the Prohibitions and Conflicts of Interest Act and its enabling Regulation, adopted by Supreme Decree N° 019-2002-PCM; Law N° 26771, the Prohibition of Acts of Nepotism Act and its enabling Regulation, adopted by Supreme Decree N° 021-2000-PCM; Law N° 27482, regulating the publication of Sworn Statements of Income, Property, and Revenues by government officials and civil servants and its enabling Regulation, adopted by Supreme Decree N° 080-2001-PCM, and others.

180. See Peru’s Reply to the Fourth Round Questionnaire, pp. 85 and 86.

of the Personnel Allocation Table (CAP) as management tools used to prepare the Organization and Functions Manual (MOF). These two Supreme Decrees are:

[220] 1) Supreme Decree N° 043-2006-PCM, approving the guidelines for preparation of the ROF

[221] 2) Supreme Decree N° 043-2004-PCM, approving the guidelines for preparation of the CAP

[222] *It is worth pointing out that Supreme Decree N° 023-2012-PCM, which adopts the enabling Regulation to Law N° 29622, entitled 'Regulation on breaches and sanctions for functional administrative liability based on reports issued by organs of the National Oversight System,' characterizes the following as a breach of the principle of eligibility (idoneidad): 'Exercising a profession or providing services in the entities without having met the requirements for the position or job, or attributing to oneself a false title or academic degree, to the detriment of the State, which shall be considered a grave violation; and if the detriment caused is financial or the public service is seriously impaired, the violation shall be considered extremely grave (Article 7.a).'*

[223] The Committee takes note of the step taken by the State under review to advance in implementation of recommendation (g) of Chapter IV, Section 1.1 of this report and of the need for the State to continue giving attention thereto, given that information is not available as to whether all government entities have the above-mentioned ROF, CAP, and MOF.

Measure h) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Design and implement mechanisms to publicize and train all public employees regarding the standards of conduct applicable to conflicts of interest, to resolve their questions thereon, and to provide regular training and updates regarding those standards.*

[224] In its reply,¹⁸¹ the State under review provides the following information regarding the foregoing measure:

[225] *"(...) Pursuant to the Rules of Procedure regarding Organization and Functions of the Office of the President of the Council of Ministers, the function of the Public Management Secretariat is to formulate, coordinate, supervise, and evaluate access to public information policies and to foster ethical behavior in public office, transparency and citizen oversight, undertaking activities designed to strengthen capacities in government entities with regard to the Code of Ethics in Public Administration. Training courses are included in the entities' Institutional Operating Plan (POI), a planning tool connecting the plan with the budget."*

[226] Given the lack of more detailed information regarding capacity-building activities in connection with the Code of Ethics in Public Administration and, in particular, with standards of conduct concerning conflicts of interest, the Committee takes note of the need for the State under review to give additional attention to implementing measure (h) of the recommendation in Chapter IV, Section 1.1 of this report.

181. See Peru's Reply to the Fourth Round Questionnaire, p. 86.

Measure i) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Evaluate the levels of use and effectiveness of the standards of conduct for preventing conflicts of interest and of the mechanisms for ensuring compliance with them that exist in Peru, as instruments for preventing corruption and, as a result of that evaluation, give due consideration to adopting measures for promoting, facilitating, consolidating or ensuring their effectiveness toward that end.*

[227] In its reply,¹⁸² the State under review provides information and reports on new developments with respect to the foregoing measure, of which, the Committee notes, as steps that contribute to progress in implementation of the measure, the following:

[228] “In our country there are a number of different regulations with various provisions relating to conflicts of interest, which has prevented them from being applied effectively. Accordingly, in the framework of a participatory process involving the public sector and civil society, and taking as a point of reference the OAS Model Law on the Declaration of Interests, we now have a “Preliminary Bill Regulating the Sworn Statement of Interests by Public Servants,” which covers in a single text the different scenarios involving conflicts of interest and requires civil servants to submit a sworn statement.”

[229] The Committee takes note of the step taken by the State under review to advance with implementation of recommendation (i) of Chapter IV, Section 1.1 of this report and of the need for the State to continue giving attention thereto, bearing in mind that the aforementioned preliminary bill has not yet been presented to Congress and has therefore not concluded the processes required for it to become law.¹⁸³

1.2. Standards of conduct to prevent conflicts of interests and mechanisms to enforce them

Recommendation:

Strengthen the implementation of laws and regulations for controlling public resources.

Measure d) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Design and implement mechanisms to publicize and train all public employees regarding the standards of conduct for ensuring the conservation and appropriate use of public resources, to resolve their questions thereon, and to provide regular training and updates regarding those standards.*

[230] In its reply,¹⁸⁴ the State under review provides the following information regarding the foregoing measure:

182. See Peru’s Reply to the Fourth Round Questionnaire, pp. 86 and 87.

183. The country under review reported that the preliminary draft bill in question was submitted to Congress in September 2012.

184. See Peru’s Reply to the Fourth Round Questionnaire, p. 87.

[231] “(...) Pursuant to the Rules of Procedure regarding Organization and Functions of the Office of the President of the Council of Ministers, the function of the Public Management Secretariat is to formulate, coordinate, supervise, and evaluate access to public information policies and to foster ethical behavior in public office, transparency and citizen oversight, undertaking activities designed to strengthen capacities in government entities with regard to the Code of Ethics in Public Administration. Training courses are included in the entities’ Institutional Operating Plan (POI).”

[232] *By virtue of their functions and spheres of competence the Government Procurement Supervision Agency (OSCE) and the Office of the Comptroller General of the Republic, as well as other entities, also engage in activities designed to disseminate information and build capacity in this field.”*

[233] Given the lack of more detailed information on the activities undertaken to disseminate codes of conduct and train civil servants in those codes with a view to conserving and correctly using public funds, the Committee takes note of the need for the State under review to give additional attention to implementing measure (d) of the recommendation in Chapter IV, Section 1.2 of this report.¹⁸⁵

Measure e) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Evaluate the levels of use and effectiveness of the standards of conduct for ensuring the conservation and appropriate use of public resources and of the mechanisms for ensuring compliance with them that exist in Peru, as instruments for preventing corruption and, as a result of that evaluation, give due consideration to adopting measures for promoting, facilitating, consolidating, or ensuring the effectiveness of them toward that end.*

[234] In its reply,¹⁸⁶ the State under review provides the following information regarding the foregoing measure:

[235] *“Regarding this measure, we consider it advisable to agree on multi-sectoral evaluation criteria for implementing the suggested measure.”*

[236] The Committee considers that the foregoing recommendation was geared to the evaluation of the activities of the Office of the Comptroller General of the Republic (CGR), bearing in mind that Law N° 27785 (Organic Law of the National Oversight System and the CGR) had entered into force in 2002, less than two years prior to publication of the First Round Report. Accordingly, the Committee considers that that measure has been superseded by the analysis of the CGR contained in Chapter II, Section 1 of this report and the recommendations made therein.

Measure g) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Include, at the time that the terms and conditions for public bidding competitions and procurements are prepared, standards that enable potential vides and different civil society stakeholders to formulate observations on draft terms and conditions, making it possible to*

185. The country under review reported that in 2012, the Office of the Comptroller General of the Republic held 24 outreach workshops on the Code of Ethics, at which a total of 3,231 officers and employees of public agencies of the executive branch received training.

186. See Peru’s Reply to the Fourth Round Questionnaire, p. 87.

include opinions in the final terms and conditions. The foregoing process must meet the requirements of full publicity and dissemination.

[237] In its reply,¹⁸⁷ the State under review provides information and reports on new developments with respect to the foregoing measure, of which the Committee notes, as steps that lead it to conclude that the measure has been satisfactorily considered, the following:

[238] *“Article 37 of the enabling Regulation for the Government Hiring/Procurement Law, adopted by Supreme Decree N° 184-2008-EF, which entered into force in February 2009, establishes that the bidding documents approved for selection processes may be pre-published in the Government Procurement Electronic System (SEACE) and posted on the institutional portal of the entity calling the tender. It should be noted that SEACE is accessed via the Internet and is completely cost-free for everyone in accordance with the principles of transparency and disclosure (...)”*

[239] The Committee takes note of the satisfactory consideration by the State under review of measure (g) of the recommendation made in Chapter IV, Section 1.2 of this report, given the entry into force of Supreme Decree N° 184-2008-EF and the actual pre-publication of 456 bidding documents on the SEACE website between March 2009 and November 2012.¹⁸⁸

Measure h) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Without forgetting the media habitually used, such as the Official Gazette, El Peruano and daily newspapers with the largest circulation at the national or local level, the Republic of Peru should, with respect to publicity for announcements of terms and conditions for public bidding competitions and procurements, examine the possibility of using a larger number of dissemination channels, such as the Internet, associations, schools, chambers of commerce or other entities that act as a hub for purveyors or professionals connected with the object of the competition or procurement in question.*

[240] In its reply,¹⁸⁹ the State under review provides information and reports on new developments with respect to the foregoing measure, of which the Committee notes, as steps that lead it to conclude that the measure has been satisfactorily considered, the following:

[241] *“All the entities are obliged to publish in the Government Procurement Electronic System (SEACE) all acts they perform during the execution of selection processes, such as calling for bids, the bidding documents, the executive summary of market options, the list of answers to queries and observations, any pronouncement made by the entity or by OSCE, the final bidding conditions, the technical and financial bids evaluation tables, the minutes of the award of contract and the consent to the award. It should be noted that SEACE is accessed via the Internet and is completely cost-free for everyone in accordance with the principles of transparency and disclosure (...)”*

[242] The Committee takes note of the satisfactory consideration by the State under review of measure (h) of the recommendation made in Chapter IV, Section 1.2 of this report, bearing in mind that Article 287 of the current enabling Regulation for the Government Procurement/Hiring Law (Supreme Decree N° 184-2008-EF amended by Supreme Decree N° 138-2012-EF in August 2012),

187. See Peru's Reply to the Fourth Round Questionnaire, p. 88.

188. http://www2.seace.gob.pe/?_pageid=21&_contentid=87

189. See Peru's Reply to the Fourth Round Questionnaire, p. 89.

expressly establishes the obligation of entities to post in SEACE their Annual Procurement/Hiring Plan, selection processes, contracts and their execution, and other acts.

Measure i) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Include on the web pages of all public entities information on their budget, finances, expenditures and human resource management, in accordance with Emergency Decree 035-2001.*

[243] In its reply,¹⁹⁰ the State under review provides the following information regarding the foregoing measure:

[244] *“Here, we should point out that Law N° 27806, dated 08/03/2002, promulgated the Consolidated Amended Text (TUO) of the Transparency and Access to Public Information Act, adopted by Supreme Decree N° 043-2003-PCM, while Supreme Decree N° 072-2003-PCM, of 08/13/2003, promulgated its enabling Regulation. This Act recognizes the right to request and receive public information from any government entity and establishes that everyone has a fundamental right to request information without having to state the grounds for the request. The entry into force of Law N° 27806 and its enabling Regulation tacitly derogated Emergency Decree N° 035-2001.”*

[245] *With a view to ensuring that the State complies with its active transparency obligations, Supreme Decree N° 063-2010-PCM, of 06/03/10 authorized implementation of the Standard Transparency Portal in all Public Administration entities. For its part, Ministerial Resolution N° 200-2010-PCM, approved Directive N° 01-2010-PCM/SGP, “Guidelines for Implementing the Standard Transparency Portal”. The Standard Transparency Portal (PTE) is an I.T. tool containing standard templates for the government entity to use to record and update information regarding its activities as required by Law N° 27806, on a monthly and quarterly basis (...).”*

[246] In addition, during the on-site visit, the representative of the Public Administration Secretariat (SGP) reported that the SGP carried out quarterly supervision of the Standard Transparency Portals (PTE), and that during its first supervision exercise more than 2,000 such portals had been evaluated.

[247] According to that representative, work began in fourth quarter 2011 with the simultaneous analysis of PTE in 11 ministries. This year (2012) progress had been made with regional governments and some municipal governments (between 30% and 40% of municipalities have no Internet access, however, and therefore have no PTE).

[248] In the third quarter of 2012, the SGP examined the second quarter 2012 performance of the PTE in all 19 ministries and found that nine of them had achieved full (100%) compliance.

[249] For the fourth quarter of 2012, the SGP planned to revise the PTE so as to enhance the quality and timeliness of the information provided through this tool and to make it more user-friendly for the general public. The revised version is expected by the end of first quarter 2013.

[250] The Committee takes note of the step taken by the State under review to advance with implementation of recommendation (i) of Chapter IV, Section 1.2 of this report and of the need for

190. See Peru's Reply to the Fourth Round Questionnaire, pp. 89 and 90.

the State to continue giving attention thereto, bearing in mind that information has not yet been published regarding the budget, finances, outlays or personnel of the PTEs in all government entities.

[251] For its part, the civil society organization “Consejo de la Prensa Peruana” (Peruvian Press Council) alluded during the on-site visit to the reports it is preparing on the Executive Branch’s compliance with Articles 5 and 25 of the Transparency and Access to Public Information Act.¹⁹¹ Its evaluation of second quarter 2012 compliance,¹⁹² finalized on August 3 2012, revealed that the Ministry of Culture had not updated its Transparency Portal information in respect of any of the items required under the Transparency Act; the Office of the President of the Council of Ministers had not updated its budget outturn information; and the Ministries of Justice and Defense had failed to update information regarding their personnel and regarding hiring/procurement in the period under evaluation.

1.3. Measures and systems requiring public officials to report acts of corruption in the performance of public functions of which they are aware to the appropriate authorities

Recommendation:

Strengthen the mechanisms the Republic of Peru has in place to require public officials to report to the competent authorities on acts of corruption in public office of which they are aware.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Issue regulations for the Civil Service Code of Ethics, regulating the punishments applicable for contravening its provisions, including those governing the obligation of reporting breaches thereof, and specifying the way in which its provisions are to apply in conjunction with other relevant rules, ensuring that the scope of its application is not curtailed (the basis for this measure is found in section 1.3.2 of Chapter II of the First Round Report).*

[252] In its reply,¹⁹³ the State under review provides the following information regarding the foregoing measure:

[253] *“Although Article 11 of the Civil Service Code of Ethics establishes that every civil servant shall be responsible for reporting breaches thereof to the Standing Committee on Disciplinary Administrative Proceedings of the entity concerned or to an equivalent body, Article 10.1 of the same Code does not consider noncompliance a breach; therefore, pursuant to the principle set forth in Article 230.4 of Law N° 27444 on General Administrative Procedure, the enabling Regulation cannot contemplate a punishment for failure to comply with the Code.*

[254] *Indeed, Article 6 of the enabling Regulation of the Code of Ethics only regards transgression of the principles, duties, and prohibitions contained in Articles 6, 7, and 8 of the Code of Ethics as a violation, not the failure to comply with the duty to report.”*

191. http://www.oas.org/juridico/pdfs/mesicic4_per_cons.pdf

192. Available at: http://www.oas.org/juridico/PDFs/mesicic4_per_PTEs.pdf

193. See Peru’s Reply to the Fourth Round Questionnaire, p. 90.

[255] In light of the information provided by the State under review, measure (a) suggested by the committee with respect to the recommendation made in Chapter IV, Section 1.3 of this report, is hereby revised as follows (see Annex I, Recommendation 1.3, measure (a)):

[256] - *Amend the Civil Service Code of Ethics so as to include punishments for noncompliance with the duty to report any breach thereof and specify how its provisions shall be applied in conjunction with other provisions on the subject, preferably without diminishing its scope of application.*

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Facilitate compliance with the obligation to report acts of corruption, through the channels deemed appropriate, regulating their use.*

[257] In its reply,¹⁹⁴ the State under review provides information and reports on new developments with respect to the foregoing measure, of which the Committee notes, as steps that lead it to conclude that the measure has been satisfactorily considered, the following:

[258] *“Currently, by using information and communication technologies (ICTs), in the form of a web-based application or e-mail, most Executive Branch entities (ministries) enable citizens to report acts of corruption. They also have a cost-free telephone line service for the same purpose.*

[259] *Furthermore Supreme Decree N° 038-2011-PCM, which approves the enabling Regulation for Law N° 29542 on the protection of whistleblowers in the administrative sphere and effective collaboration in criminal matters, expressly provides that reports of arbitrary or illegal acts to the Office of the Comptroller General of the Republic may be filed via e-mail or by using a web-based application installed for that purpose.”*

[260] The Committee takes note of the satisfactory consideration by the State under review of the recommendation made in Chapter IV, Section 1.3 of this report, bearing in mind that Article 7 of the enabling Regulation for the Whistleblower Protection Act (Supreme Decree N° 038-2011-PCM) establishes a model Reporting Template that can be sent to the CGR electronically. The CGR also has a National Denunciation Response System (SINAD) for providing the public with the web-based electronic report form¹⁹⁵ and information on how to present the report and keep track of what happens to it.

Measure c) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Adopt and implement measures to protect whistleblowers, so that they enjoy guarantees in the face of threats or any other act of pressure or coercion to which they may be subjected as a result of compliance with this obligation.*

194. See Peru's Reply to the Fourth Round Questionnaire, p. 91.

195. Portal of the National Denunciation Response System (SINAD) of the Office of the Comptroller General of the Republic (CGR):

http://www.contraloria.gob.pe/wps/portal/portalcgr/website/secciones/sinad/sinad2/denunciaenlinea!/ut/p/b1/04_Sj9CPykssy0xPLMnMz0vMAfGjzOL93d0djTwtjQ38fb3MDDydLM2Mgiy8DC08TfQLsh0VAfwucOc/

[261] In its reply,¹⁹⁶ the State under review provides information and reports on new developments with respect to the foregoing measure, of which the Committee notes, as steps that lead it to conclude that the measure has been satisfactorily considered, the following:

[262] – *Adoption of the Law on the protection of whistleblowers in the administrative sphere and effective collaboration in criminal matters (Law N° 29542) and its enabling Regulation (Supreme Decree N° 038-2011-PCM).*

[263] – *Implementation of the National Denunciation Response System (Sistema Nacional de Atención de Denuncias - SINAD) and regulation, through Directive No 06-2011-CG/GSND, of uniform criteria, procedures, roles, and stages for processing reports by citizens nation-wide to the National Oversight System (SNC) through the CGR and Institutional Oversight Bodies (OCI), while protecting the whistleblower's identity and contents of his or her report.*

[264] The Committee takes note of the satisfactory consideration by the State under review of measure (c) of the recommendation made in Chapter IV, Section 1.3 of this report, bearing in mind that Articles 8 and 9 of the enabling Regulation for the Whistleblower Protection Act (Supreme Decree N° 038-2011-PCM) establish a series of whistleblower protection measures (nondisclosure of her or his identity, protection in the workplace, confidential nature of the report, and so on). Nevertheless, the Committee notes that this subject will be dealt with in greater depth in the follow-up to the recommendations of the Second Round, which specifically addressed the good faith whistleblower protection issue.

Measure d) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Extend the protection measures contained in Law 27378 of December 2000, Supreme Decree 020-2001–JUS of July 2001, and Supreme Decree 031-2001–JUS of October 2001, for persons who in good faith report crimes and have not participated in the commission of those crimes.*

[265] In its reply,¹⁹⁷ the State under review provides information and reports on new developments with respect to the foregoing measure, of which the Committee notes, as steps that lead it to conclude that the measure has been satisfactorily considered, the following:

[266] – *Adoption of the Law on the protection of whistleblowers in the administrative sphere and effective collaboration in criminal matters (Law N° 29542) and its enabling Regulation (Supreme Decree N° 038-2011-PCM).*

[267] The Committee takes note of the satisfactory consideration by the State under review of measure (d) of the recommendation made in Chapter IV, Section 1.3 of this report, bearing in mind that the Whistleblower Protection Act amended Law N° 27378 and listed among possible beneficiaries of rewards for effective collaboration persons connected with the commission of crimes perpetrated by one or more people or by criminal organizations, provided that government funds were involved or that the persons involved were government officials or civil servants or any person acting with their consent or acquiescence.

196. See Peru's Reply to the Fourth Round Questionnaire, pp. 91 to 101.

197. See Peru's Reply to the Fourth Round Questionnaire, p. 101 and 102.

Measure e) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Provide training to public officials on their responsibility to report to appropriate authorities any acts of corruption that come to their attention.*

[268] In its reply,¹⁹⁸ the State under review provides the following information regarding the foregoing measure:

[269] *“According to the Rules of Procedure regarding Organization and Functions of the Office of the President of the Council of Ministers, the purpose of the Public Administration Secretariat (SGP) is to formulate, coordinate, supervise, and evaluate access to public information policies and to foster ethical conduct in public office, transparency, and citizen oversight, by undertaking activities designed to build capacities relating to the Civil Service Code of Ethics in government entities, including activities regarding the responsibility of government officials to report breaches of the Code. Training courses are included in the entities’ Institutional Operating (POI) Plan: a planning tool that links the Plan to the budget.”*

[270] In light of the lack of more detailed information on capacity-building activities related to the Civil Service Code of Ethics, especially as regards the responsibility of government officials to report to the competent authorities acts of corruption they become aware of, the Committee takes note of the need for the State under review to give further additional attention to implementation of measure (e) of the recommendation in Chapter IV, Section 1.3 of this report.

Measure f) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Evaluate the levels of use and effectiveness of the measures and systems for requiring public employees to report acts of corruption, and of the mechanisms for ensuring compliance with them that exist in Peru, as instruments for preventing corruption and, as a result of that evaluation, give due consideration to adopting measures for promoting, facilitating, consolidating or ensuring their effectiveness toward that end.*

[271] In its reply, the State under review made no reference to measure (f). Therefore, the Committee takes note of the need for the State under review to give additional attention to its implementation.

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

Recommendation 2.1.:

Expand the provisions governing the content of the sworn statement and its use in preventing and fighting corruption.

198. See Peru’s Reply to the Fourth Round Questionnaire, p. 103.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Expand the provisions governing the content of sworn statements of income, property, and revenues by state officials and civil servants, so that they also explicitly oblige said employees to provide information on their “liabilities,” and develop this concept by indicating the elements it comprises and the information that is to be supplied in connection with it (the basis for this measure is found in section 2.2 of Chapter II of the First Round Report)*

[272] In its reply,¹⁹⁹ the State under review provides the following information regarding the foregoing measure:

[273] *“To supplement the provisions on developing sworn statements of income, property, and revenues that show the declarant’s liabilities, the Office of the Comptroller General of the Republic, as a Higher Oversight Body, has implemented an on-line electronic system with procedures approved by the Office of the Comptroller General Resolution N° 082-2008-CG, published on February 27, 2008, which approved Directive N° 004-2008-CG/FIS – Provisions regarding the use of the Electronic System for On-Line Registering of Sworn Statements of Income, Property, and Revenues (SDJL).*

[274] *Said legal provision regulates use of the Electronic System for On-Line Registering of Sworn Statements of Income, Property, and Revenues as a tool for on-line processing of the registration, presentation and dispatch of the Sworn Statements and List of Appointments and Contracts of Persons who are Required to Submit Them. Use of the aforementioned electronic system has been phased in gradually since 2008, making it possible to improve and expand coverage of the information provided by declarants in all sections of the Sworn Statement with respect to both the assets and liabilities included in the obligation.*

[275] *For the data on liabilities, the system registers information regarding the entity or person with which/whom the liability exists, the name of the entity, where applicable, and the type, currency, and exchange rate of the liability.*

[276] *As regards technical regulation documents, so far there is the Instruction for Auditing Sworn Statements (Instructivo de Fiscalización de Declaraciones Juradas), approved on December 7, 2010, which deals with the request to the audited entity or person for information regarding its/his/her current expenditures in order to ascertain that income and expenditure flows are consistent. (...).”*

[277] The Committee takes note of the need for the State under Review to pay additional attention to implementation of measure (a) in Recommendation 2.1 in Chapter IV, Section 2.1 of this report, bearing in mind that the aforementioned legal provisions do not expressly refer to the contents of the Sworn Statement, or to inclusion of the declarant’s liabilities. Nor is that concept developed with an indication of the components involved and of the information to be provided regarding those liabilities.

199. See Peru’s reply to the Fourth Round questionnaire, pp. 104 and 105.

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Include in the standards on sworn financial statements the obligation to provide information on the separate assets belonging to the official's dependents; the assets belonging to his or her spouse; and to the assets jointly owned with his or her spouse or domestic partner, stating the provenance of said assets.*

[278] In its reply,²⁰⁰ the State under review provides the following information regarding the foregoing measure:

[279] *"It is to be noted that the provisions on Sworn Statements of the Office of the Comptroller General of the Republic as a Higher Oversight Body do stipulate that there is an obligation to declare the "assets of conjugal partnerships" (bienes de la sociedad de gananciales). That being so, the Electronic System for On-Line Registering of Sworn Statements of Income, Property, and Revenues has made it possible to gather and compile more disaggregated data on assets, such as the name of the owner (separate property of the audited person or his spouse, partnership property [bienes sociales], property shared with third parties, and so on), ownership percentages, type of value assessment reported (self-valuation, market value, sales value, etc.)."*

[280] *In this context, Resolution of the Comptroller General N° 316-2008-CG, published on August 9, 2008, approved Directive N° 008-2008-CG/FIS – Provisions regarding the Auditing of Sworn Statements of Income, Property, and Revenues, Article 8.3 of which stipulates that for audits of sworn statements information on the audited party and his spouse or common-law spouse (concubina), where applicable, in all accessible databases; it further provides for the possibility of asking the audited party, his spouse, or common-law spouse, or the entities involved, for any information required for the audit, including information on their assets..*

[281] (...)

[282] *With a view to strengthening the Sworn Statements of Income, Property, and Revenues mechanism, this Higher Oversight Body has presented a bill to Congress (Bill N° 82/2006-CG, updated version N° 96/2011-CG) which, inter alia, provides for the legal obligation of the declarant to declare all his income, property, and revenues, and specifies the obligation to also declare the spouse's own assets and the couple's partnership property (bienes sociales), provided that the ownership status is that of a conjugal partnership (sociedad de gananciales).*

[283] *Furthermore, as an innovation, the Bill introduces the obligation to declare in the Sworn Statement assets pertaining to the declarant's dependent children as well as the obligation to declare, where applicable, the assets of the common-law spouse. (...)"*

[284] The Committee takes note of the explanation provided in the reply of the State under review regarding the obligation to report the assets and revenues of conjugal partnerships in sworn statements of income, property, and revenues contained in Article 5 of Law N° 27482.

[285] In light of the information provided earlier by the State under review, measure (b) suggested by the Committee to the State under review, with respect to Recommendation 2.1 of Chapter IV,

200. See Peru's reply to the Fourth Round questionnaire, pp. 104 and 105.

Section 2 of this report, is hereby revised as follows (see Annex I, Recommendation 2.1, measure (b)): -

[286] *Include in the provisions on Sworn Statements, the obligation to declare assets belonging to the spouse and to the dependent children of the declarant, stating where they come from.*

[287] The Committee takes note of the step taken by the State under review to advance with implementation of measure (b) of Recommendation 2.1 of Chapter IV, Section 2 of this report and of the need for the State to continue giving attention thereto, bearing in mind that the aforementioned Bill N° 96/2011-CG has not yet become law.

Measure c) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Include a section in the sworn statement for the declaration of any positions or appointments the official may have held (in public or private activity) prior to assuming the position in connection with which the sworn financial statement is being submitted; and use this declaration for the purposes of detecting possible conflicts of interest.*

[288] In its reply,²⁰¹ the State under review provides information and reports on new developments with respect to the foregoing measure of which, the Committee notes, as a step that contributes to progress in implementation of the measure, the following:

[289] *“Here, it is to be noted that, in the framework of a participatory process involving the public sector and civil society, and taking as a point of reference the OAS Model Law on the Declaration of Interests, we now have a “Preliminary Bill Regulating the Sworn Statement of Interests by Public Servants,” shortly to be presented to Congress, which will contribute to implementation of the Committee’s recommendation.*

[290] *The contents of this preliminary bill require certain officials to file a return declaring their professional, business, or commercial activities for fear that they could trigger conflicts of interest in the performance of their duties, as well as information regarding kinship and common-law relationships, where applicable. “*

[291] The Committee takes note of the step taken by the State under review to advance with implementation of measure (c) of Recommendation 2.1 of Chapter IV, Section 2 of this report and of the need for the State to continue giving attention thereto, bearing in mind that the aforementioned preliminary bill has not yet been presented to Congress and has not yet completed the procedures needed for it to become law.²⁰²

Measure d) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Include, on the list of those required to submit declarations, all public officials authorized to issue licenses, as well as those who sit on panels or working groups that oversee competitive bidding processes.*

201. See Peru’s reply to the Fourth Round questionnaire, p. 106.

202. The country under review reported that the preliminary bill in question was submitted to Congress in September 2012.

[292] In its reply,²⁰³ the State under review provides the following information regarding the foregoing measure:

[293] *“It is to be noted that this Higher Oversight Body’s²⁰⁴ provisions on sworn statements shall be applicable to the heads or persons in charge of the following departments: treasury (cash flow), budget, accounting, audits, logistics and procurement (supplies).*

[294] *In addition to those mentioned in the foregoing item, Section (l) of the above-mentioned Bill N° 96/2011-CG proposes that the provisions also apply to any government official or civil servant who the Office of the Comptroller General asks to include on the list of those required to submit declarations because of the nature of his or her office or function. (...).”*

[295] Regarding the information provided in the reply of the State under review, the Committee notes that the legislation referred to was duly analyzed. Details regarding it can be found in Section 2.1 of the report of the First Round, pages 17 and 18.

[296] The Committee also takes note of the step taken by the State under review to advance with implementation of measure (d) of Recommendation 2.1 of Chapter IV, Section 2 of this report, and of the need for it to continue giving attention thereto, bearing in mind that the aforementioned Bill N°96/211-CG has not completed the procedures needed for it to become law and that, even if it is approved on the aforementioned terms, there is no guarantee that those required to file a declaration will include those responsible for granting licenses or those that are members of committees or working groups overseeing competitive bidding processes.

Recommendation 2.2.:

Use sworn statements, by optimizing the analysis of their content, so as to provide a useful tool for detecting and preventing conflicts of interest, as well as detecting possible cases of illicit enrichment.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Establish systems for the effective verification of sworn financial statements, including a specific timetable and measures to overcome obstacles to access to required information, and establishing measures to overcome obstacles for accessing any information sources that may be required.*

[297] In its reply,²⁰⁵ the State under review provides information and reports on new developments with respect to the foregoing measure, of which, the Committee notes, as steps that contribute to progress in implementation of the measure, the following:

[298] *“The office of the Comptroller General, as a higher oversight body, through its property audit department, has been developing and applying strategies for verifying and auditing the contents of the sworn statements of government officials selected according to risk factors. This strategy*

203. See Peru’s reply to the Fourth Round questionnaire, p. 106.

204. Article 2 of Law 27482 – Law regulating publication of the Sworn Statement of Income, Property, and Revenues of government officials and civil servants and Article 3 of its enabling Regulation approved by Supreme Decree N° 080-2001-PCM.

205. See Peru’s reply to the Fourth Round questionnaire, p. 107.

essentially considers three levels of evaluation: A) Risk Analysis; B) Examination of Sworn Statements; and C) Sworn Statement Audits.

[299] *Each of these levels has different variables: duration, depth of analysis, and the number of sworn statements evaluated. These activities are carried out throughout the year, with specific goals for each of them.*

[300] *In addition, inter-agency agreements have been concluded with autonomous organs and entities with a view to eliciting privileged information. Thus, ties have been established with the National Superintendency of Public Registries (SUNARP) in order to obtain access to registry information; with the Superintendency of Banks and Insurance (SPS) to access the information regarding the audited party's liabilities to financial institutions; with the National Registry of Identification and Civil Status (RENIEC) with respect to identity information; preparations are also under way to sign an agreement with the tax authority SUNAT with a view to obtaining non-confidential tax information. Furthermore, joint work is under way with the Financial Intelligence Unit (UIF) of the Superintendency of Banks and Insurance (SPS) to obtain information regarding officials considered a source of risk.*

[301] *With respect to this item in Bill N°96/211-CG presented to the President of the National Congress, the Bill proposes including in the sworn statement express authorization by the declarant to lift bank, tax, and identity confidentiality requirements.*

[302] *Difficulties that have occurred include certain technical constraints regarding how the entities and agencies from whom information is required under the abovementioned agreements structure their databases in different ways, which complicates the task of obtaining information suited to our needs. There are also constraints regarding the proposed provisions, which are subject to approval by entities outside the Office of the Comptroller General."*

[303] In addition, during the on-site visit attention was drawn to other difficulties faced by the CGR with respect to verifying and auditing the content of the sworn statements: 1) numerous databases exist, but they are not interconnected; 2) that does not allow the CGR to conduct a swift and effective analysis of changes in officials assets; and 3) asset verification processes (information management, examination, and audit of the sworn statements) is done manually which can lead to the need to reprocess data.

[304] The Committee takes note of the steps taken by the State under review to advance with implementation of measure (a) of Recommendation 2.2 in Chapter IV, Section 2 of this report, and of the need for it to continue giving attention thereto, bearing in mind that signature of the agreement with SUNAT is still pending and that the aforementioned Bill N°96/2011-CG has not completed the procedures for it to become law.

[305] Furthermore, in light of the information provided previously by the State under review, measure (a) suggested by the Committee to the State under review, with respect to Recommendation 2.2 in Chapter IV, Section 2 of this report is hereby revised as follows (see Annex I, Recommendation 2.2 measure (a)):

[306] - *Strengthen systems for enforcing verification of the contents of the sworn statements by the CGR, by guaranteeing it access to any information sources needed and by seeking, as far as possible,*

to achieve interconnection of the information contained in the databases of the various organs, so as to enable the CGR to conduct swift and effective analysis of changes in officials' assets.

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Establish a register of officials required to submit sworn financial statements, and mechanisms for periodic updates of the register.*

[307] In its reply,²⁰⁶ the State under review provides information and reports on new developments with respect to the foregoing measure, of which, the Committee notes, as steps that contribute to progress in implementation of the measure, the following:

[308] “(...)

[309] *The Electronic System for Online Registering of Sworn Statements of Income, Property, and Revenues provides a roster of persons required to file returns in the entities involved. That roster is administered by the heads of the General Directorates of Administration, or their equivalent, in each entity whose job it is to incorporate the users or declarants in their own entities.*

[310] *So far, with the help of an Inter-American Development Bank (IDB) consultant and that of other organizational units in the Office of the Comptroller General, improvements are being made to functional aspects of the declarants module (Universe of Declarants Module) through an Individual Consultancy Contract N°002-2010-CGR/IDB- Expansion of the Scope of the Sworn Statement Information System.*

[311] *One of the challenges identified is obtaining approval from external entities for the amendments proposed by this entity (...).”*

[312] Additionally, during the on-site visit, information was provided on the CGR's main problem regarding the lack of a standardized list of public sector positions. An effort is being made to improve the roster of persons obliged to file declarations and to improve position management. There are approximately 50,000 to 60,000 persons obliged to file and that number is increasing.

[313] The Committee takes note of the steps taken by the State under review to advance with implementation of measure (b) of Recommendation 2.2 in Chapter IV, Section 2 of this report, and of the need for it to continue giving attention thereto, bearing in mind that the aforementioned international corporation project is still going on. Still pending are delivery of the consultant's report and execution of the subsequent activities needed for implementation.

Measure c) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Evaluate the possibility of implementing a computerized system to optimize capacity for the control of sworn financial statements, alerting appropriate authorities to substantial changes in the content of an official's sworn statements.*

206. See Peru's reply to the Fourth Round questionnaire, p. 108.

[314] In its reply,²⁰⁷ the State under review provides information and reports on new developments with respect to the foregoing measure, of which, the Committee notes, as steps that contribute to progress in implementation of the measure, the following:

[315] *“The Office of the Comptroller General, as a Higher Oversight Body, has an I.T. system which optimizes control functions, known as the Sworn Statements of Income, Property, and Revenues System, which is accessed online through the Institutional Portal website.*

[316] *That mechanism considers Risk Analysis and Examination of Sworn Statements strategies in order to monitor oversight of the assets of declarants holding sensitive positions (ministers, vice-ministers, heads of entities, and so on). However, those activities have not yet been systematized.*

[317] *One identifiable difficulty in this area is the limited operation or capacity of the Information System and Technologies area.”*

[318] In addition, during the on-site visit, further details were presented on the international cooperation project for expanding the scope of the Sworn Statements Information System. Under that project, a consultant has been hired to work on a report aimed at improving the functional capacities of the systems used to verify the content of the statements by developing modules, consultations, and/or changes that can reduce the use of resources, elicit more information, and provide more scope for exploiting that information. Another problem identified was duplication in the dispatch of statements (hard copy and electronic), due to the fact that the current law establishes that statements must be delivered in a signed hard copy, a difficulty that would be overcome with the adoption of Bill N°96/2011-CG.

[319] The Committee takes note of the steps taken by the State under review to advance with implementation of measure (c) of Recommendation 2.2 in Chapter IV, Section 2 of this report and of the need for the State to continue giving attention thereto, bearing in mind that the aforementioned international cooperation project is still under way and that the consultant still has to deliver his report and that execution of subsequent activities needed for project implementation are still pending.

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

[320] The recommendation in this section was satisfactorily considered and, therefore, does not require additional attention.

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

4.1. General participation mechanisms

[321] The Committee did not formulate any recommendations in this section.

207. See Peru's reply to the Fourth Round questionnaire, pp. 108 and 109.

4.2. Mechanisms for access to information

Recommendation:

Strengthen mechanisms for guaranteeing access to public information.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Adopt appropriate measures to ensure that those state agencies required to do so by the right-to-information rules incorporate into their Sole Texts of Administrative Procedures (TUPAs) the procedure for access to information (the basis for this measure is found in section 4.2.3 of Chapter II of the First Round Report).*

[322] In its reply,²⁰⁸ the State under review provides the following information regarding the foregoing measure:

[323] “(...)

[324] *According to the Rules of Procedure regarding Organization and Functions of the Office of the President of the Council of Ministers, amended by supreme decree number 057-2008-PCM, the function the Public Administration Secretariat is, inter alia, to evaluate administrative streamlining processes in conjunction with the Consolidated Text of Administrative Procedures (TUPA) of the Executive Branch entities.*

[325] *For its part, Article 4 of Supreme Decree number 025-2010-PCM, which amends Supreme Decree No. 027-2007-PCM defining and establishing Mandatory Policies for National Government Entities, stipulates that the Office of the President of the Council of Ministers will supervise the Administrative Streamlining Policy and National Plan, which includes supervision of the TUPA of government entities.*

[326] *At the same time, as part of this year’s process of preparing the State Modernization Policy, one of the criteria for evaluating the TUPA will be access to public information. This evaluation will be conducted on a half-yearly basis, with the first report being issued in second half 2012.”*

[327] During the on-site visit, it was reported that 400 TUPAs were evaluated by a consultant firm in 2011. However, in 2012, that evaluation was not conducted because it was decided to adopt an administrative streamlining methodology as a part of the TUPAs and because the entities had until December 31, 2012 to implement it. Accordingly, a complete evaluation will only be possible in first quarter 2013. The representatives of the Public Administration Secretariat also reported that an effort was being made to insure that entities performed a realistic analysis of the cost of the TUPAs. An effort had been made to train government officials and to sensitize them to the fact that citizens should only be charged the actual costs of copying the information they request.

[328] The Committee takes note of the steps taken by the State under review to advance with implementation of measure (a) of Recommendation 4.2 of Chapter IV, Section 4 of this report and of the need for the State to continue giving attention thereto, bearing in mind that a comprehensive evaluation of the TUPAs is still pending.

208. See Peru’s reply to the Fourth Round questionnaire, pp. 109 and 110.

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Adopt appropriate measures to ensure that those state agencies required to do so by the norms on right-to-information publish on their Internet web sites the information required to appear thereon by these norms (the basis for this measure is found in section 4.2.3 of Chapter II of the First Round Report).*

[329] In its reply,²⁰⁹ the State under review provides the following information regarding the foregoing measure:

[330] *“The Public Administration Secretariat of the Office of the President of the Council of Ministers, pursuant to its function as the governing body for transparency issues, a function provided for in Supreme Decree No. 057-2008-PCM—Rules of Procedure regarding organization and functions of the Office of the President of the Council of Ministers—, before carrying out its work of supervising the Standard Transparency Portals (PTE) of government entities, holds coordination meetings with the heads of the transparency portals of the government entities and technical-legal training workshops designed to boost the capacities of those officials. It also issues opinions and answers questions regarding transparency.”*

[331] During the on-site visit, it was reported that the Public Administration Secretariat (SGP) supervises the PTEs on a quarterly basis and that the first evaluation covered more than 2,000 transparency portals. The supervision began in fourth quarter 2011 with an analysis of PTEs in 11 ministries. In 2012, they proceeded to supervise regional governments and some municipal governments, whereby it should be borne in mind that between 30% and 40% of municipalities have no access to the internet and therefore do not have a PTE.

[332] During the first supervision of the PTEs in the ministries, it transpired that a little over half of them published 100% of the information, one of the major problems being publication of officials' salaries. The representatives of the SGP mentioned that all ministries publish their officials' salaries in their PTE. However, the salaries are published under headings based on the officials' labor regimes, which differ, making it difficult to get an overview. It was reported that the SGP was working to consolidate all information regarding officials' wages and other forms of remuneration, for all labor regimes, in a single document and by name.

[333] At the end of the first quarter of 2012, the SGP inspected the PTEs of the regional governments and found that only one regional government was 100% in compliance, with three other regional governments scoring 95%. The remaining 21 regional governments did not perform adequately with respect to updating their information.

[334] In the third quarter of 2012, the SGP inspected the PTEs of 19 ministries, with respect to their performance in the second quarter of 2012, and found 9 ministries that were fully in compliance. For the fourth quarter of 2012, the SGP planned to begin work on revising the PTE so as to improve the quality and timeliness of the information provided by this tool and to provide a more user-friendly

209. See Peru's reply to the Fourth Round questionnaire, p. 110.

version for the general public accessing it. The representatives of the SGP said that they hoped to have the revised version ready by the end of the first quarter of 2013.²¹⁰

[335] The Committee takes note of the steps taken by the State under review to advance with implementation of measure (b) in Recommendation 4.2 of Chapter IV, Section 4 of this report and of the need for the State to continue giving attention thereto, bearing in mind that, even though 9 ministries had achieved 100% compliance, with respect to the information given in their PTEs, there were still 10 ministries that had not yet achieved that objective and the situation was even worse with regard to regional governments, 21 of which do not adequately update their information.

[336] For its part, the civil society organization “Consejo de la Prensa Peruana” (Peruvian Press Council) referred during the on-site visit to the report it prepares on compliance by the Executive Branch with Articles 5 and 25 of the Transparency and Access to Public Information Act.²¹¹ Its evaluation of second quarter 2012,²¹² finalized on August 3, 2012 shows that the Ministry of Culture did not update information on any item required by the Transparency Act in its Transparency Portal. Likewise, the Office of the President of the Council of Ministers had failed to update its budget outturn information. Nor had the Ministries of Justice and Defense updated their information regarding their personnel and hiring/procurement in the period evaluated.

Measure c) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Implement training and dissemination programs dealing with the mechanisms for information access, in order to help public officials and citizens understand them and to optimize the use of available technology to that end.*

[337] In its reply,²¹³ the State under review provides the following information regarding the foregoing measure:

[338] “(...)

[339] *Furthermore, in the context of the Open Government Action Plan, adopted by Ministerial Resolution No. 085-2012-PCM of the Office of the President of the Council of Ministers, there are specific commitments regarding capacity building not only among government employees, but also among the general public, with a view to encouraging demands for accountability, citizen oversight, and more informed participation. This action plan envisages commitments with respect to e-governance, which involves making better use of Information Technologies and reducing the country’s digital divide, areas under the responsibility of the National E-Governance and I.T. Office (ONGEI), a specialized technical organ of the Office of the President of the Council of Ministers.*

[340] *During last quarter 2011 and first quarter 2012, the Public Administration Secretariat coordinated a regulatory review process designed to deepen transparency, based on the opinions of the main stakeholders in access to public information. This process aimed at culminating in changes*

210. Further information on the SGP’s quarterly supervision of the PTEs can be found at:

http://www.oas.org/juridico/pdfs/mesicic4_per_sgp1.pdf

211. http://www.oas.org/juridico/pdfs/mesicic4_per_cons.pdf

212. Available at: http://www.oas.org/juridico/PDFs/mesicic4_per_PTEs.pdf

213. See Peru’s reply to the Fourth Round questionnaire, pp. 110 and 111.

to regulatory provisions, will also entail designing and implementing a methodology for dissemination to and training of government employees in all public administration entities.”

[341] The Committee takes note of the steps taken by the State under review to advance with implementation of measure (c) in Recommendation 4.2 of Chapter IV, Section 4 of this report and of the need for the State to continue giving attention thereto, bearing in mind that the work of the SGP referred to above is still under way.

[342] During the on-site visit, the representatives of civil society organizations also expressed their views on the subject. In the opinion of the representatives of the “Instituto Prensa y Sociedad” [Press and Society Institute], not enough has been done to disseminate the Access to Public Information Act and provide training courses on it. Occasional efforts in that direction had been made by the Ombudsman’s Office and the SGP, but using international cooperation funds. There was no State policy on the subject. In their view, it would be interesting to see the state-owned media used to disseminate the Access Act and too see SERVIR including the subject in training courses for civil servants.

[343] For the representative of “Consejo de la Prensa Peruana,” while there was no comprehensive training policy on the subject of access to information, the Office of the President of the Council of Ministers (PCM) was making a huge effort to achieve civil society participation in the adoption of Open Government standards. Thus, he reported having received requests from several ministries for training courses for personnel on the subject of access to information.

Measure d) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Conduct an evaluation to determine the factors that could be adversely affecting the enforcement of the norms governing the right to information and, as a result thereof, adopt measures to overcome those problems (the basis for this measure is found in section 4.2.3 of Chapter II of the First Round Report).*

[344] In its reply,²¹⁴ the State under review provides the following information regarding the foregoing measure:

[345] *“Based on the diagnostic assessment and the criteria to be taken into account for changes in regulations, prepared by the working group composed of government entities and civil society organizations coordinated by the Public Administration Secretariat of the Office of the President of the Council of Ministers, the following were identified as the chief obstacles to effective application of the provisions on the right of access to information:*

[346] - *Shortcomings in document management and archiving on the part of government entities, which made it difficult to attend in a timely and appropriate manner to requests for access to public information.*

[347] - *The nonexistence of a profile establishing the skills and capacities expected of officials in charge of access to public information and the punishments applicable in the event of noncompliance.*

214. See Peru’s reply to the Fourth Round questionnaire, p. 111.

[348] - *The nonexistence of a specialized office within government entities that would make it possible to provide better and more timely attention to requests for access to public information.*

[349] - *The excessive latitude allowed for exceptions to the right of access to public information and the lack of proper substantiation of denials of citizens' access.*

[350] - *Difficulties distinguishing between the obligations imposed by the regulations on transparency and access to public information and the Personal Data Protection Act.*

[351] - *The need to use information technologies to improve the response to requests for access to public information.*

[352] *Faced with this diagnostic assessment, as mentioned earlier, the Public Administration Secretariat of the Office of the President of the Council of Ministers will propose, in second half 2012, an amendment to the enabling Regulation of the Transparency and Access to Public Information Act and then specific measures to improve its implementation."*

[353] The Committee takes note of the steps taken by the State under review to advance with implementation of measure (d) in Recommendation 4.2 of Chapter IV, Section 4 of this report and of the need for the State to continue addressing this matter, bearing in mind that the activities of the SGP reported earlier are still under way.

[354] During the on-site visit, the civil society representatives underscored what they considered to be obstacles to accessing information in Peru. Thus, the representatives of "Proética" and of the "Instituto Prensa y Sociedad" insisted on the need for an autonomous authority responsible for implementing the Access to Information Act, with powers to punish noncompliance. They also insisted that denials of access to information can be resolved administratively, without having to resort to the Judiciary. It was reported that the matter had been addressed as one of the objectives of the Peruvian Action Plan for the Open Government Partnership. For their part, the representatives of the "Working Group against Corruption" stressed that one major problem was the delay in publishing, or failure to publish, in the Official Gazette, official guidelines approved in legal instruments. Other issues mentioned were: 1) Excessive or disproportionate charges for the information; 2) Publication of information in bureaucratic and technical language and formats, which the general public finds hard to understand; 3) Municipal directives contradicting the provisions of the Access to information Act; 4) Deficient archiving systems and the lack of a culture of transparency.

Measure e) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Optimize the system for the organization of public archives to facilitate public access to the information.*

[355] In its reply,²¹⁵ the State under review provides information and reports on new developments with respect to the foregoing measure, of which, the Committee notes, as steps that contribute to progress in implementation of the measure, the following:

215. See Peru's reply to the Fourth Round questionnaire, p. 112.

[356] – The adoption in 2008 of the Rules of Procedure for Imposing Administrative Sanctions for Acts Detrimental to the Nation’s Archives and Documentary and Cultural Heritage (Resolution of the Director of Archives (Resolución Jefatural N° 076-2008-AGN/J), for the purpose of punishing Public Administration entities that fail to comply with the provisions governing documents and archives.

[357] – The issuance of a number of directives aimed at improving the way the Public Administration archives are organized. Notable directives include the Archiving Procedures Manual, Directive N° 005-2008-AGN/DNDAAI (Folio numbering of archive documents in archives forming part of the National Archives System”) and Directive No. 003-2008-AGN/DNDAAI (“Rules governing the formulation and approval of the Annual Work Plan of the Organ Administering the Archives of Public Administration entities”).

[358] During the on-site visit, the representative of the National General Archive mentioned the following (and other) difficulties with achieving compliance with the foregoing measure: 1) The nonexistence of a body coordinating the central archive system (each entity keeps its archives as it sees fit); 2) Budgetary constraints, which mean that most entities do not have a unit responsible for the conservation and recording of information; and 3) Poorly disseminated information as to the function performed by archivists and the scarcity of university courses on the subject.

[359] The Committee takes note of the steps taken by the State under review to advance with implementation of measure (e) in Recommendation 4.2 of Chapter IV, Section 4 of this report and of the need for the State to continue giving attention thereto, bearing in mind that there are still a number of obstacles to be overcome before the State under review can have an archives system that can facilitate the population’s access to public information.

Measure f) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Strengthen existing protections for the right to public information, so that access to such information cannot be denied or limited on grounds, or according to criteria, other than those established in the law.*

[360] In its reply,²¹⁶ the State under review provides the following information regarding the foregoing measure:

[361] *“We consider that guarantees for the full exercise of the right to access public information are strengthened by the actions of such entities as the Ombudsman’s Office, an autonomous constitutional agency that by virtue of Article 162 of the political Constitution of the State is called upon ‘to defend the constitutional and fundamental rights of the person and of the community; and to oversee compliance with the duties of the State administration and the provision of public services to the citizens.’”*

[362] *This entity has programs and actions designed to strengthen guarantees of the right to access public information. Although it is not incumbent upon us to report on its actions, we consider that this entity’s institutional performance contributes greatly to the achievement of the proposed measure.*

216. See Peru’s reply to the Fourth Round questionnaire, p. 113.

[363] *For its part, Article 202 of the Political Constitution of the State establishes the functions of the Constitutional Court, including that of adjudicate, as the court of last resort, decisions denying habeas corpus, amparo, habeas data, or an executory order. To that extent, the highest organ for interpreting the Constitution contributes, through its judgments, to improved exercise of the right of access to public information by reinforcing the guarantees that protect it.”*

[364] As for the information provided in the reply of the State under review, the Committee observes that the recommendation was shaped by the “Sixth Report of the Ombudsman to the National Congress, 2002-2003,” mentioned in Section 4.2 of the First Round report, pp. 26 and 27.

[365] The Committee further notes that, even though more than 10 years have elapsed since promulgation of the Transparency and Access to Public Information Act, the State under review still does not have a body in charge of access to information in Peru, with responsibility for supervising and ensuring full compliance with that law and one whose functions include guaranteeing that access to information cannot be denied or restricted on grounds other than those established by law or on the basis of criteria other than those established by law.

[366] Furthermore, in light of the information provided previously by the State under review, measure (f) suggested by the Committee to the State under review, with respect to Recommendation 4.2 in Chapter IV, Section 2 of this report is hereby revised as follows (see Annex I, Recommendation 4.2 measure (f)):

[367] - *Consider establishing an authority responsible for access to information dedicated to publicizing, supervising and ensuring full compliance with the Transparency and Access to Public Information Act, with power to punish noncompliance and to resolve issues stemming from the denial of access to information, without having to resort to the Judiciary, as well as to guarantee that access to public information cannot be denied or restricted on grounds other than those established by law or on the basis of criteria other than those established by law.*

[368] Along those same lines, as was reported earlier, the Representative of “Proética” and of the “Instituto Prensa y Sociedad” insisted, during the on-site visit, on the need to have an autonomous governing body for the access to information act. They reported that the subject had been included as one of the objectives of the Peruvian Action Plan for the Open Government Partnership.

Measure g) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Analyze the feasibility of reconciling paragraphs 1 and 2 of article 18 of Law 27927 of 2003, with respect to the possibility of destruction by the public administration of information in its possession, and to establish objective criteria for the concept of “public utility” mentioned in paragraph 2 of the above-cited article.*

[369] In its reply,²¹⁷ the State under review provides the following information regarding the foregoing measure:

[370] *“In connection with the review of regulations coordinated by the Public Management Secretariat of the Office of the President of the Council of Ministers with government entities and civil society organizations, it became clear that there was a need to make the rules regarding the*

217. See Peru’s reply to the Fourth Round questionnaire, p. 113.

archiving and conservation of information compatible with the principles underpinning the Transparency and Access to Public Information Act. Indeed, it was observed that too broad concepts may contribute to restrictive interpretations that prevent appropriate exercise of the right to access to public information. For that reasons, this and other similar aspects in which concepts need to be defined more precisely, will be taken into account in the aforementioned review of regulations, which should result in a new enabling regulation to the current Transparency and Access to Information Act, during the second half of 2012.”

[371] The Committee takes note of the steps taken by the State under review to advance with implementation of measure (g) in Recommendation 4.2 of Chapter IV, Section 4 of this report and of the need for the State to continue giving attention thereto, bearing in mind that the task of reviewing the regulations is still under way.

4.3. Mechanisms for consultation

Recommendation:

Supplement the existing consultation mechanisms and, when appropriate, establish procedures that will enable public consultations to be held prior to the drafting of public policies and the final adoption of legal provisions.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Establish procedures, when appropriate, for allowing interested parties to inquire into the design of public policies and the drafting of bills, laws, decrees, and resolutions by the executive branch.*

[372] In its reply,²¹⁸ the State under review the State under review provides information and reports on new developments with respect to the foregoing measure, of which the Committee notes, as steps that lead it to conclude that the measure has been satisfactorily considered, the following:

[373] – Adoption of the Open Government Action Plan through ministerial resolution of the Office of the President of the Council of Ministers No. 085-2012-PCM, of 04/10/2012, which contains specific commitments with respect to transparency and access to public information, government integrity, citizen participation and e-government in order to improve services to citizens. The draft of that Action Plan was posted on the institutional website of the PCM and other government and civil society entities, in order to enable citizens to send in their views via the web.

[374] – The promulgation of the Organic Law of the Executive Branch (LOPE) – Law No. 29158, in December 2008, which contains procedures relating to the publication of draft enabling regulations, on the electronic portal of the entities, in order to receive contributions from citizens during no fewer than five (5) calendar days, when the law so requires.

[375] - The promulgation of law No. 29785 (the Law on the rights of Indigenous or native peoples to prior consultation), in September 2011, which develops the contents, principles, and procedure of the right to prior consultation of these peoples regarding legislative or administrative measures that directly affect them.

218. See Peru's reply to the Fourth Round questionnaire, p. 114.

[376] The Committee takes note of the satisfactory consideration of measure (a) of Recommendation 4.3 of Chapter IV Section 4, taking into account the two major laws promulgated in order to expand mechanisms for consulting citizens, as well as the commitments undertaken by the state under review with regard to the Open Government Action Plan. The Committee looks forward to information on progress made with developing that Action Plan in Peru.

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Extend the practice of public hearings or develop other mechanisms for allowing public consultation in areas other than those already provided for.*

[377] In its reply,²¹⁹ the State under review provides information and reports on new developments with respect to the foregoing measure, of which, the Committee notes, as steps that contribute to progress in implementation of the measure, the following:

[378] *“Peru’s Open Government Action Plan approved in April 2012, the implementation of which is coordinated by the Public Management Secretariat of the Office of the President of The Council of Ministers, contains specific commitments to promote in public institutions the use of information technologies for culling the opinions and suggestions of the citizens as well as for providing them with irrelevant information.*

[379] *The Open Government Action Plan will promote a number of mechanisms, in addition to those that already exist for consulting citizens, the results of which will be taken into account in the design, implementation, and evaluation of public policies.”*

[380] The Committee takes note of the step taken by the State under review to advance in implementation of measure (b) of Recommendation 4.3 of Chapter IV Section 4 of this report, and of the need for the State to continue giving attention thereto, bearing in mind that efforts are still under way to implement the commitments undertaken in this regard with the framework of Peru’s Open Government Action Plan.

4.4. Mechanisms to encourage participation in public administration

Recommendation:

Strengthen and continue to implement mechanisms to encourage civil society organizations and NGOs to participate in the public administration and to make progress with repealing rules that could discourage such participation.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Establish mechanisms, in addition to those that already exist, for strengthening civil society and NGO participation in efforts to prevent corruption and heighten public awareness about the problem, and to encourage awareness about the participation mechanisms that exist and how they can be used.*

219. See Peru’s reply to the Fourth Round questionnaire, p. 115.

[381] In its reply,²²⁰ the State under review provides information and reports on new developments with respect to the foregoing measure, of which the Committee notes, as steps that lead it to conclude that the measure has been satisfactorily considered, the Committee notes the following:

[382] *“On the understanding that transparency and government integrity are intrinsic to public management which, when duly integrated with public policies, also serve to prevent corruption, the Public Management Secretariat of the Office of the President of the Council of Ministers has formed a working group to review regulations and to implement the transparency and Access to Publication Act, with participation of civil society organizations.*

[383] *Moreover, the Open Government Working Group, in which civil society organizations are also represented, and topics dealing with transparency, government integrity, and citizen participation are addressed and is, in our opinion, examples of a forum that contributes to citizen participation in matters related to the prevention of corruption.”*

[384] Also singled out as important steps are activities designed to prevent corruption carried out by other organs such as the high-level anticorruption commission (CAN)²²¹ and by the CGR (‘Young Auditors’ Program),²²² the ‘Prevention during Elections’ Program, the [Postula con la Tuya and Únete al Control] Programs,²²³ the Transparency Promotion Program,²²⁴ the Dissemination of Public Ethics Program,²²⁵ and the Dissemination of Preventive Knowledge [Pack Anticorrupción] Program.²²⁶

[385] In light of the above, the Committee takes note of the satisfactory consideration by the State under review of measure (a) of Recommendation 4.4 in Chapter IV, Section 4.

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Conduct an evaluation of the rules governing citizen’s participation rights as set forth in the Law on the Right of Participation and Citizen Control, in order to detect the presence of any precepts that could be adversely influencing the effectiveness of those rights and to make the corresponding adjustments thereto (the basis for this measure is found in section 4.4.2 of Chapter II of the First Round Report).*

[386] In its reply,²²⁷ the State under review provides information and reports on new developments with respect to the foregoing measure, of which, the Committee notes, as a step that contributes to progress in implementation of the measure, the following:

[387] *“As mentioned above, the function of the Public Management Secretariat is to formulate, coordinate, supervise, and evaluate access to public information policies, to foster ethical behavior in public office, transparency and citizen oversight. Accordingly, an evaluation of the provisions on*

220. See Peru’s reply to the Fourth Round questionnaire, p. 115.

221. <http://can.pcm.gob.pe/>

222. See Peru’s reply to the Fourth Round questionnaire, pp. 31 to 32 and 131 to 137.

223. *Ibid.*, pp. 32 and 33.

224. *Ibid.*, pp. 33 and 34.

225. *Ibid.*, pp. 34 and 35.

226. *Ibid.*, pp. 35 and 36. Further information on the ‘Pack Anticorrupción’ is available at:

<http://apps.contraloria.gob.pe/packanticorrupcion/index.html>

227. See Peru’s reply to the Fourth Round questionnaire, p. 116.

citizen participation is planned for second half 2012, with a view to designing mechanisms to increase citizen participation in public affairs. To begin with, an inter-sectoral working group will be formed with civil society organizations to craft a methodology for reviewing regulations and validate possible amendments.”

[388] The Committee takes note of the step taken by the State under review to advance with implementation of measure (b) in Recommendation 4.4 of Chapter IV, Section 4 of this report and of the need for the State to continue giving attention thereto, bearing in mind that the task of reviewing the regulations is still under way.

4.5. Participation mechanisms for follow-up of public administration

Recommendation:

Strengthen and continue to implement mechanisms to encourage civil society and nongovernmental organizations to participate in the monitoring of public affairs.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Conduct an evaluation of the rules governing citizens' control rights as set forth in the Law on the Right of Participation and Citizen Control, in order to detect the presence of any precepts that could be adversely influencing the effectiveness of those rights and to make the corresponding adjustments thereto* (the basis for this measure is found in section 4.5.2 of Chapter II of the First Round Report).

[389] In its reply,²²⁸ the State under review provides the following information regarding the foregoing measure:

[390] *The action to address implementation of this measure is contained in the one referring to measure 4.4.b in the Citizens' Participation and Oversight Rights Act.”*

[391] The Committee takes note of the step taken by the State under review to advance with implementation of measure (a) in Recommendation 4.5 of Chapter IV, Section 4 of this report and of the need for the State to continue giving attention thereto, bearing in mind that the task of reviewing the regulations is still under way.

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Design and implement programs for disseminating the mechanisms for participating in the monitoring of the public administration and, when appropriate, training and providing civil society and NGOs with the tools needed to use those mechanisms.*

[392] In its reply,²²⁹ the State under review provides the following information regarding the foregoing measure:

228. See Peru's reply to the Fourth Round questionnaire, p. 116.

229. See Peru's reply to the Fourth Round questionnaire, p. 116.

[393] *“The Public Management Secretariat of the Office of the President of the Council of Ministers, which has been working on the State Modernization Policy, has envisaged a set of tools for monitoring and evaluating the policy and plan, both of which will embody the principle of citizen participation. This monitoring and evaluation system will be built into a tool called “Infobarometer,” which will contain mechanisms for inter-acting with the citizenry so as to receive its inputs, suggestions, and opinions in a more effective manner.*

[394] *This tool should be up and running in first half 2013.”*

[395] The Committee takes note of the step taken by the State under review to advance with implementation of measure (b) in Recommendation 4.5 of Chapter IV, Section 4 of this report and of the need for the State to continue giving attention thereto, bearing in mind that work on implementing this tool is still under way.

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

Recommendations formulated by the Committee that require additional attention within the Framework of the Second and Third Rounds:

Recommendation 5.1:

Continue its efforts to exchange technical cooperation with other states parties regarding the best ways and methods for preventing, detecting, investigating and punishing acts of corruption.

[396] In its reply,²³⁰ the State under review provides information and reports on new developments with respect to the foregoing measure, of which the Committee notes, as steps that lead it to conclude that the recommendation has been satisfactorily considered, the following:

[397] – The promulgation of Law No. 28671, on February 1, 2006, through which the Seventh Book of the Code of Criminal Procedure, “International Judicial Cooperation,” entered into force throughout Peru.

[398] – The conclusion of technical cooperation agreements between the Peruvian Office of the Attorney General and foreign institutions, such as the Prosecutor General’s Offices (Fiscalías Generales) of Spain, Paraguay, Chile, Ecuador, Colombia, as well as international organizations, with a view to optimizing its capacity to respond to crime, especially corruption offenses.²³¹

[399] – The visit by representatives of the Judiciary, in particular the Judicial Oversight Office (OCMA) and the Judicial Ethics Committee (CEJ), to other Latin American and European countries, in order to get to know their policies, instruments, and supporting services with respect to this line of action and the promotion of the exchanging of successful experiences with disciplinary oversight of judges, judicial assistants, and administrative staff, and investigation into instances of professional misconduct on their part.

230. See Peru’s reply to the Fourth Round questionnaire, pp. 117 to 123.

231. The list of agreements signed is available at: <http://www.mpfj.gob.pe/home?destino=convenios>

[400] – The active participation of the CGR in the activities of the Organization of Latin American and Caribbean Supreme Audit Institutions (OLACEFS), through its various Committees and Commissions.²³²

[401] – The signing of two agreements on technical assistance and information sharing between the CGR and the Offices of the Comptroller General of Chile and Costa Rica, respectively, in October 2009 and July 2010.

[402] In light of the above, the Committee takes note of the satisfactory consideration by the State under review of Recommendation 5.1 of Chapter IV, Section 5.

Recommendation 5.2:

Design and implement a comprehensive dissemination and training program for the competent authorities and civil servants, to ensure that they have knowledge and can apply the mutual assistance provisions that exist for the investigation and prosecution of acts of corruption in the Convention and in other treaties entered into by the Republic of Peru. In addition, we recommend training the relevant officials to ensure the broadest mutual technical and legal cooperation for preventing, detecting, investigating, and punishing acts of corruption.

[403] In its reply,²³³ the State under review provides the following information regarding the foregoing measure:

[404] *“The International Judicial Cooperation and Extraditions Unit of the National Public Prosecutor’s Office (Fiscalía de la Nación) provides cooperation at two levels: first, case by case, providing the requesting authority (Public Prosecutor or Judge) with the support needed for proper formulation of his or her request for assistance, which involves familiarization with applicable international instruments and with the best way to formulate the request, bearing in mind the legal and procedural particularities of the requested country.*

[405] *The other level is geared to justice system operators and takes the form of academic encounters. In December 2011, with World Bank support, a training meeting was organized at the headquarters of the Office of the Attorney General to boost capacity to detect, freeze, and repatriate money held in foreign financial institutions due to corruption cases. It is hope that this meeting will be repeated this year.*

[406] *Furthermore, we aim to build an itinerant international cooperation module to enable us to transfer the training team to the provinces and thereby bring international cooperation closer to justice system operators in the interior.*

[407] (...)

[408] *The main constraint as regards training is the heavy workload of the International Judicial Cooperation and Extraditions Unit of the of the National Public Prosecutor’s Office, which prevents it from fully meeting its objectives.*

[409] (...)

232. See Peru’s reply to the Fourth Round questionnaire, pp. 121 and 122.

233. See Peru’s reply to the Fourth Round questionnaire, pp. 123 to 130.

[410] *A dedicated link to “International Judicial Cooperation” has been installed on the Judiciary’s institutional portal to serve as a useful tool for justice system operators nationwide, as well as for the legal community in general, because it can be used to consult major international instruments, such as: extradition treaties, treaties on Judicial Assistance in Criminal Matters, and agreements on transfers of convicts, signed by the Peruvian State.*

[411] *The same link to “International Judicial Cooperation” also incorporates flow charts on International Judicial Cooperation pursuant to Book VII of the new Code of Criminal Procedure (Legislative Decree No. 957) (...).*

[412] *The Committee takes note of the step taken by the State under review to move ahead with implementation of Recommendation 5.2 of Chapter IV, Section 5 of this report and of the need for the State to continue addressing this matter, bearing in mind that the training activities described above, while relevant and important, do not constitute a comprehensive dissemination and training program enabling competent authorities and officials to know and apply the reciprocal assistance provisions for investigating and trying acts of corruption contemplated in the Inter-American Convention against Corruption and in other treaties to which the Republic of Peru is party.*

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

[413] The Committee did not offer formulate recommendations in this section.

7. GENERAL RECOMMENDATIONS

Recommendations formulated by the Committee that require additional attention within the Framework of the Second and Third Rounds:

Recommendation 7.1:

Design and implement, when appropriate, training programs for the civil servants responsible for enforcing the system, standards, measures and mechanisms referred to in this report, in order to ensure that they are adequately understood, managed and put into practice.

Recommendation 7.2:

Select and develop procedures and indicators, as appropriate, for verifying the follow-up of the recommendations contained in this report, and report back to the Committee, through the Technical Secretariat, on the steps taken. For this purpose, Peru could consider taking into account the list of more general indicators applicable within the Inter-American system that were available for the selection indicated by the State under review and posted on the OAS website by the Technical Secretariat of the Committee, together with information derived from the review of the mechanisms developed in accordance with recommendation 7.3 below.

Recommendation 7.3:

Develop, as appropriate and where they do not yet exist, procedures designed to analyze the mechanisms mentioned in this report, as well as the recommendations contained in this report.

[414] In its Response the country under review did not refer to recommendations 7.1, 7.2 and 7.3. The Committee takes note of the need for the country under review to give additional attention to their implementation.

ANNEX I

OUTSTANDING AND REFORMULATED RECOMMENDATIONS REGARDING THE TOPICS REVIEWED IN THE FIRST ROUND

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE THEM (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)

1.1. Standards of conduct to prevent conflicts of interests and mechanisms to enforce them

Recommendation:

Strengthen the implementation of laws and regulations governing conflicts of interest.

Suggested measures:

- a) Analyze possible situations of conflict of interest that could arise from the constitutional authorization (articles 92 and 126 of the Constitution of Peru) that permits a member of congress to be appointed as a Minister of State, and empowers such Member to take part in congressional voting; it would be advisable for such Member to abstain on matters directly connected with their executive function.
- b) Evaluate the possibility of amending the First Additional and Final Provision of Law 27815 (Code of Ethics in Public Administration Act) to eliminate its supplemental character in the case of lower ranking provisions.
- c) Clearly define, for each position, the technical and professional requisites to be met by those appointed to positions of confidence [Law 28175, article 4(2)].
- d) Design and implement mechanisms to publicize and train all public employees regarding the standards of conduct applicable to conflicts of interest, to resolve their questions thereon, and to provide regular training and updates regarding those standards.
- e) Evaluate the levels of use and effectiveness of the standards of conduct for preventing conflicts of interest and of the mechanisms for ensuring compliance with them that exist in Peru, as instruments for preventing corruption and, as a result of that evaluation, give due consideration to adopting measures for promoting, facilitating, consolidating or ensuring their effectiveness toward that end.

1.2. Standards of conduct to prevent conflicts of interests and mechanisms to enforce them

Recommendation:

Strengthen the implementation of laws and regulations for controlling public resources.

Suggested measures:

- a) Design and implement mechanisms to publicize and train all public employees regarding the standards of conduct for ensuring the conservation and appropriate use of public resources, to

resolve their questions thereon, and to provide regular training and updates regarding those standards.

- b) Include on the web pages of all public entities information on their budget, finances, expenditures and human resource management, in accordance with Emergency Decree 035-2001.

1.3. Measures and systems requiring public officials to report acts of corruption in the performance of public functions of which they are aware to the appropriate authorities

Recommendation:

Strengthen the mechanisms the Republic of Peru has in place to require public officials to report to the competent authorities on acts of corruption in public office of which they are aware.

Suggested measures:

- a) Amend the Civil Service Code of Ethics so as to include punishments for noncompliance with the duty to report any breach thereof and specify how its provisions shall be applied in conjunction with other provisions on the subject, preferably without diminishing its scope of application.
- b) Provide training to public officials on their responsibility to report to appropriate authorities any acts of corruption that come to their attention.
- c) Evaluate the levels of use and effectiveness of the measures and systems for requiring public employees to report acts of corruption, and of the mechanisms for ensuring compliance with them that exist in Peru, as instruments for preventing corruption and, as a result of that evaluation, give due consideration to adopting measures for promoting, facilitating, consolidating or ensuring their effectiveness toward that end.

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

Recommendation 2.1:

Expand the provisions governing the content of the sworn statement and its use in preventing and fighting corruption.

Suggested measures:

- a) Expand the provisions governing the content of sworn statements of income, property, and revenues by state officials and civil servants, so that they also explicitly oblige said employees to provide information on their "liabilities," and develop this concept by indicating the elements it comprises and the information that is to be supplied in connection with it.
- b) Include in the provisions on Sworn Statements, the obligation to declare assets belonging to the spouse and to the dependent children of the declarant, stating where they come from.

- c) Include a section in the sworn statement for the declaration of any positions or appointments the official may have held (in public or private activity) prior to assuming the position in connection with which the sworn financial statement is being submitted; and use this declaration for the purposes of detecting possible conflicts of interest.
- d) Include, on the list of those required to submit declarations, all public officials authorized to issue licenses, as well as those who sit on panels or working groups that oversee competitive bidding processes.

Recommendation 2.2:

Use sworn statements, by optimizing the analysis of their content, so as to provide a useful tool for detecting and preventing conflicts of interest, as well as detecting possible cases of illicit enrichment.

Suggested measures:

- a) Strengthen systems for enforcing verification of the contents of the sworn statements by the CGR, by guaranteeing it access to any information sources needed and by seeking, as far as possible, to achieve interconnection of the information contained in the databases of the various organs, so as to enable the CGR to conduct swift and effective analysis of changes in officials' assets.
- b) Establish a register of officials required to submit sworn financial statements, and mechanisms for periodic updates of the register.
- c) Evaluate the possibility of implementing a computerized system to optimize capacity for the control of sworn financial statements, alerting appropriate authorities to substantial changes in the content of an official's sworn statements.

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

The recommendation on this section was satisfactorily considered and, therefore, does not require additional attention.

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

4.1. General participation mechanisms

The Committee did not offer any recommendations in this section.

4.2. Mechanisms for access to information

Recommendation:

Strengthen mechanisms for guaranteeing access to public information.

Suggested measures:

- a) Adopt appropriate measures to ensure that those state agencies required to do so by the right-to-information rules incorporate into their Sole Texts of Administrative Procedures (TUPAs) the procedure for access to information.
- b) Adopt appropriate measures to ensure that those state agencies required to do so by the norms on right-to-information publish on their Internet web sites the information required to appear thereon by the these norms.
- c) Implement training and dissemination programs dealing with the mechanisms for information access, in order to help public officials and citizens understand them and to optimize the use of available technology to that end.
- d) Conduct an evaluation to determine the factors that could be adversely affecting the enforcement of the norms governing the right to information and, as a result thereof, adopt measures to overcome those problems.
- e) Optimize the system for the organization of public archives to facilitate public access to the information.
- f) Consider establishing an authority responsible for access to information dedicated to publicizing, supervising and ensuring full compliance with the Transparency and Access to Public Information Act, with power to punish noncompliance and to resolve issues stemming from the denial of access to information, without having to resort to the Judiciary, as well as to guarantee that access to public information cannot be denied or restricted on grounds other than those established by law or on the basis of criteria other than those established by law.
- g) Analyze the feasibility of reconciling paragraphs 1 and 2 of article 18 of Law 27927 of 2003, with respect to the possibility of destruction by the public administration of information in its possession, and to establish objective criteria for the concept of “public utility” mentioned in paragraph 2 of the above-cited article.

4.3. Mechanisms for consultation

Recommendation:

Supplement the existing consultation mechanisms and, when appropriate, establish procedures that will enable public consultations to be held prior to the drafting of public policies and the final adoption of legal provisions.

Suggested measure:

- Extend the practice of public hearings or develop other mechanisms for allowing public consultation in areas other than those already provided for.

4.4. Mechanisms to encourage participation in public administration

Recommendation:

Strengthen and continue to implement mechanisms to encourage civil society organizations and NGOs to participate in the public administration and to make progress with repealing rules that could discourage such participation.

Suggested measure:

- Conduct an evaluation of the rules governing citizen's participation rights as set forth in the Law on the Right of Participation and Citizen Control, in order to detect the presence of any precepts that could be adversely influencing the effectiveness of those rights and to make the corresponding adjustments thereto.

4.5 Participation mechanisms for follow-up of public administration

Recommendation:

Strengthen and continue to implement mechanisms to encourage civil society and nongovernmental organizations to participate in the monitoring of public affairs.

Suggested measures:

- a) Conduct an evaluation of the rules governing citizens' control rights as set forth in the Law on the Right of Participation and Citizen Control, in order to detect the presence of any precepts that could be adversely influencing the effectiveness of those rights and to make the corresponding adjustments thereto.
- b) Design and implement programs for disseminating the mechanisms for participating in the monitoring of the public administration and, when appropriate, training and providing civil society and NGOs with the tools needed to use those mechanisms.

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

Recommendation 5.1:

The recommendation on this section was satisfactorily considered and, therefore, does not require additional attention.

Recommendation 5.2:

Design and implement a comprehensive dissemination and training program for the competent authorities and civil servants, to ensure that they have knowledge and can apply the mutual assistance provisions that exist for the investigation and prosecution of acts of corruption in the Convention and in other treaties entered into by the Republic of Peru. In addition, we recommend training the relevant officials to ensure the broadest mutual technical and legal cooperation for preventing, detecting, investigating, and punishing acts of corruption.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

The Committee did not offer any recommendations in this section.

7. GENERAL RECOMMENDATIONS

Recommendation 7.1:

Design and implement, when appropriate, training programs for the civil servants responsible for enforcing the system, standards, measures and mechanisms referred to in this report, in order to ensure that they are adequately understood, managed and put into practice.

Recommendation 7.2:

Select and develop procedures and indicators, as appropriate, for verifying the follow-up of the recommendations contained in this report, and report back to the Committee, through the Technical Secretariat, on the steps taken. For this purpose, Peru could consider taking into account the list of more general indicators applicable within the Inter-American system that were available for the selection indicated by the State under review and posted on the OAS website by the Technical Secretariat of the Committee, together with information derived from the review of the mechanisms developed in accordance with recommendation 7.3 below.

Recommendation 7.3:

Develop, as appropriate and where they do not yet exist, procedures designed to analyze the mechanisms mentioned in this report, as well as the recommendations contained in this report.

ANNEX II

**AGENDA OF THE ON-SITE VISIT TO THE
REPUBLIC OF PERU**

<u>Monday, September 24, 2012</u>	
4:30pm – 5:45pm <i>Place: Sol de Oro Hotel</i>	Coordination meeting between the representatives of the Subgroup Member States and the Technical Secretariat.
6:00pm – 7:15pm <i>Place: Office of the President of the Council of Ministers (Av. Armendariz 339, Miraflores district)</i>	Coordination meeting between the representatives of the country under review, the Subgroup Member States, and the Technical Secretariat.
<u>Tuesday, September 25, 2012</u>	
8:30am – 10:30am	Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers.
<i>Place: Office of the President of the Council of Ministers (Av. Armendariz 339, Miraflores district).</i>	Topic: Oversight bodies <ul style="list-style-type: none">• Civil society’s views on the role of oversight bodies and anticorruption efforts in Peru.• The Office of the Anticorruption Attorney and anticorruption efforts in Peru.• Challenges facing the investigation, prosecution, and punishment of acts of corruption in Peru.• Cooperation between the private sector and oversight bodies.
	<u>Participants:</u> <i>PROÉTICA (Peruvian Chapter of Transparency International)</i> Cecilia Blondet, Executive Director <i>Anticorruption Working Group (GTCC)</i> Gladys Andrade, Legal Advisor Giancarlo Castiglione, Coordinator <i>Researcher</i> Jaris Mujica, joint author of the study “ <i>A Critical View of the Office of the Anticorruption Attorney: Civil Reparations / Investigations / Information System.</i> ”

	<p><i>Bar Association of Lima (CAL)</i></p> <p>Raúl Chaname Orbe, Dean</p> <p>Oscar Cornejo, Chair, Special Commission on the Efficacy of Anticorruption.</p> <p><i>Researcher</i></p> <p>Yván Montoya Vivanco, coordinator of the Anticorruption Project, Institute for Democracy and Human Rights (IDEHPUCP) of the Pontifical Catholic University of Peru.</p> <p><i>National Confederation of Private Business Organizations (CONFIEP)</i></p> <p>Gabriel Amaro, General Manager</p>
<p>10:30am – 12:30pm</p>	<p>Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers. (Cont.)</p>
<p><u>Place:</u> <i>Office of the President of the Council of Ministers (Av. Armendariz 339, Miraflores district).</i></p>	<p>Topic: Follow-up on first-round recommendations</p> <ul style="list-style-type: none"> • Conflicts of interest. • Sworn statements. • Access to public information. • Mechanisms for civil society participation in preventing corruption. <p><u>Participants:</u></p> <p><i>PROÉTICA (Peruvian Chapter of Transparency International)</i></p> <p>Cecilia Blondet, Executive Director</p> <p><i>Anticorruption Working Group (GTCC)</i></p> <p>Gladys Andrade, Legal Advisor</p> <p>Giancarlo Castiglione, Coordinator</p> <p><i>Press and Society Institute</i></p> <p>Roberto Pereira, Legal Advisor</p> <p><i>Peruvian Press Council</i></p> <p>Kela León, Executive Director</p> <p><i>National Confederation of Private Business Organizations (CONFIEP)</i></p> <p>Gabriel Amaro, General Manager</p>
<p>12:30pm – 2:00pm</p>	<p>Lunch</p>

<p>2:00pm – 3:15pm</p>	<p>Panel 1: Office of the Comptroller General of the Republic (CGR)</p>
<p><u>Place:</u> <i>Office of the President of the Council of Ministers (Av. Armendariz 339, Miraflores district).</i></p>	<p>Topics:</p> <ul style="list-style-type: none"> • Institutional introduction (10 minutes). • Results in relation to the fulfillment of responsibilities. • Difficulties in attaining its goals. • Good practices (“Young Auditors Program”). <hr/> <p><u>Participants:</u></p> <ul style="list-style-type: none"> - Carla Salazar Lui-Lam, General Secretary, CGR - Paco Toledo Yallico, Central Manager of Quality, CGR - Violeta Santín Alfageme, Manager for Sanctioning Procedures, CGR - Luis Alonso Robas Sánchez, Manager, Specialized Control, CGR - Sally Paredes Cárdenas, Supervisor, Department of Corruption Prevention, CGR - Fernando Ortega Cadiilo, Manager, Department of Corruption Prevention, CGR
<p>3:15pm – 4:30pm</p>	<p>Panel 2: Office of the Comptroller General of the Republic (CGR)</p>
<p><u>Place:</u> <i>Office of the President of the Council of Ministers (Av. Armendariz 339, Miraflores district).</i></p>	<p>Topics:</p> <ul style="list-style-type: none"> • Regime of competencies and interinstitutional coordination mechanisms. • Exceptions to the jurisdiction of the Office of the Comptroller General of the Republic. • Accountability mechanisms. • Budgetary regime. <hr/> <p><u>Participants:</u></p> <ul style="list-style-type: none"> - Carla Salazar Lui-Lam, General Secretary, CGR - Paco Toledo Yallico, Central Manager of Quality, CGR - Violeta Santín Alfageme, Manager for Sanctioning Procedures, CGR - Luis Alonso Robas Sánchez, Manager, Specialized Control, CGR - Sally Paredes Cárdenas, Supervisor, Department of Corruption Prevention, CGR - Fernando Ortega Cadiilo, Manager, Department of Corruption

	Prevention, CGR
4:30pm – 6:00pm	Panel 3: Office of the Comptroller General of the Republic (CGR)
<u>Place:</u> <i>Office of the President of the Council of Ministers (Av. Armendariz 339, Miraflores district).</i>	Topics: <ul style="list-style-type: none"> • Preventing conflicts of interest and systems for declaring incomes, assets, and liabilities (follow-up on first-round recommendations).
	<u>Participants:</u> <ul style="list-style-type: none"> - Carla Salazar Lui-Lam, General Secretary, CGR - Paco Toledo Yallico, Central Manager of Quality, CGR - Violeta Santín Alfageme, Manager for Sanctioning Procedures, CGR - Luis Alonso Robas Sánchez, Manager, Specialized Control, CGR - Sally Paredes Cárdenas, Supervisor, Department of Corruption Prevention, CGR - Fernando Ortega Cadiilo, Manager, Department of Corruption Prevention, CGR
6:00pm – 6:30pm	Informal Meeting^{234/} between the representatives of the Subgroup Member States and the Technical Secretariat.
<u>Wednesday, September 26, 2012</u>	
8:30am – 10:30am	Panel 4: Public Prosecution Service (MP)
<u>Place:</u> <i>Office of the President of the Council of Ministers (Av. Armendariz 339, Miraflores district).</i>	Topics: <ul style="list-style-type: none"> • Institutional introduction (10 minutes). • Results in relation to the fulfillment of responsibilities. • Review remedies against decisions adopted (archiving investigations). • Staff hiring regime.
	<u>Participants:</u> <ul style="list-style-type: none"> - Carlos Américo Ramos Heredia, Supreme Prosecutor, Office of the Superior Court Public Prosecutor for Internal Oversight. - Secilia Hinojosa, Fiscal Deputy Supreme Prosecutor, Chief of the

234. The second paragraph of provision 20 of the *Methodology for Conducting On-site Visits* states: “At the conclusion of the meetings on each day of the on-site visit, the Technical Secretariat shall organize an informal meeting with the members of the Subgroup, to exchange preliminary points of view on the topics addressed at those meetings.”

	<p>Legal Cooperation and Extradition Unit of the Office of the Attorney General.</p> <ul style="list-style-type: none"> - Gustavo Efraín Quiroz Vallejos, Coordinating Superior Prosecutor, Specialized National Superior Court Public Prosecutors’ Office in Public Corruption Crimes (Lima). - Oscar Aníbal Zevallos Palomino, Superior Prosecutor, Specialized National Higher Prosecutors’ Office in Public Corruption Crimes (Lima). - Oscar Hernán Miranda Orrillo, Provincial Coordinating Prosecutor, Anticorruption Prosecutors’ Offices (Lima). - Daniel Ramsay, Advisor.
10:30am – 12:30pm	Panel 5: Public Prosecution Service (MP)
<p><u>Place:</u> <i>Office of the President of the Council of Ministers (Av. Armendariz 339, Miraflores district).</i></p>	<p>Topics:</p> <ul style="list-style-type: none"> • Institutional strengthening actions. • Internal control mechanisms. • Accountability mechanisms. • Budgetary regime. • Assistance and cooperation (follow-up on first-round recommendations).
	<p><u>Participants:</u></p> <ul style="list-style-type: none"> - Carlos Américo Ramos Heredia, Supreme Prosecutor, Office of the Superior Court Public Prosecutor for Internal Oversight. - Secilia Hinojosa, Fiscal Deputy Supreme Prosecutor, Chief of the Legal Cooperation and Extradition Unit of the Office of the Attorney General. - Gustavo Efraín Quiroz Vallejos, Coordinating Superior Prosecutor, Specialized National Superior Court Public Prosecutors’ Office in Public Corruption Crimes (Lima). - Oscar Aníbal Zevallos Palomino, Superior Prosecutor, Specialized National Higher Prosecutors’ Office in Public Corruption Crimes (Lima). - Oscar Hernán Miranda Orrillo, Provincial Coordinating Prosecutor, Anticorruption Prosecutors’ Offices (Lima). - Daniel Ramsay, Advisor.
12:30pm – 2:00pm	Lunch
2:00pm – 4:00pm	Panel 6: Judiciary

<p><u>Place:</u> <i>Office of the President of the Council of Ministers (Av. Armendariz 339, Miraflores district).</i></p>	<p>Topics:</p> <ul style="list-style-type: none"> • Institutional introduction (10 minutes). • Decision-making process and review remedies. • Results in relation to the fulfillment of its responsibilities.
	<p><u>Participants:</u></p> <ul style="list-style-type: none"> - Joel Segura Alania, Secretary General of the Judiciary. - Juan Carlos Santillán Tuesta, Magistrate of the Investigation and Anticorruption Unit of the Magistrates Oversight Office. - Helder Domínguez Haro, Director, Center of Judicial Investigations. - Fanny Uchuya Donayre, Advisor, Office of the President of the Judiciary - Ruth Ramirez Arcaya, Responsible for the verification and analysis of the sworn statements, Sub-Unit for Wealth and Financial Investigation of the Office of the Magistrates Oversight Office. - Fabrizio Terán Ludwick, Manager of Planning, Judiciary.
<p>4:00pm – 6:00pm</p>	<p>Panel 7: Judiciary</p>
<p><u>Place:</u> <i>Office of the President of the Council of Ministers (Av. Armendariz 339, Miraflores district).</i></p>	<p>Topics:</p> <ul style="list-style-type: none"> • Interinstitutional coordination mechanisms (Office of the Comptroller General, Public Prosecution Service, others). • Budgetary regime. • Systems for declaring incomes, assets, and liabilities (follow-up on first-round recommendations). • Assistance and cooperation (follow-up on first-round recommendations).
	<p><u>Participants:</u></p> <ul style="list-style-type: none"> - Joel Segura Alania, Secretary General of the Judiciary. - Juan Carlos Santillán Tuesta, Magistrate of the Investigation and Anticorruption Unit of the Magistrates Oversight Office. - Helder Domínguez Haro, Director, Center of Judicial Investigations. - Fanny Uchuya Donayre, Advisor, Office of the President of the Judiciary - Ruth Ramirez Arcaya, Responsible for the verification and analysis of the sworn statements, Sub-Unit for Wealth and Financial Investigation of the Office of the Magistrates Oversight Office.

	- Fabrizio Terán Ludwick, Manager of Planning, Judiciary.
6:00pm – 6:30pm	Informal meeting between the representatives of the Subgroup Member States and the Technical Secretariat.
<u>Thursday, September 27, 2012</u>	
8:30am – 10:30am	Panel 8: Office of the Anticorruption Attorney
<u>Place:</u> <i>Office of the President of the Council of Ministers (Av. Armendariz 339, Miraflores district).</i>	Topics: <ul style="list-style-type: none"> • Institutional introduction (10 minutes). • Results in relation to the fulfillment of responsibilities. • Institutional strengthening actions. • Hiring regime for staff and directors. • Internal rules/norms for the fulfillment of its responsibilities.
	<u>Participants:</u> <ul style="list-style-type: none"> - Julio Arbizu, Anticorruption Prosecutor. - Víctor Manuel Quinteros, Coordinator of the Anticorruption Observatory of the Office of the Public Prosecutor Specializing in Corruption Offenses. - Luis Alberto Tapia Soriano, Deputy Prosecutor of the Office of the Public Prosecutor Specializing in Corruption Offenses.
10:30am – 12:30pm	Panel 9: Anti-Corruption Prosecutor's Office
<u>Place:</u> <i>Office of the President of the Council of Ministers (Av. Armendariz 339, Miraflores district).</i>	Topics: <ul style="list-style-type: none"> • Regime of competencies and interinstitutional coordination mechanisms. • Internal control mechanisms. • Budgetary regime. • Accountability mechanisms. • Difficulties and specific needs related to technical cooperation.
	<u>Participants:</u> <ul style="list-style-type: none"> - Julio Arbizu, Anticorruption Prosecutor. - Víctor Manuel Quinteros, Coordinator of the Anticorruption Observatory of the Office of the Public Prosecutor Specializing in Corruption Offenses. - Luis Alberto Tapia Soriano, Deputy Prosecutor of the Office of the Public Prosecutor Specializing in Corruption Offenses.

12:30pm – 2:00pm	Lunch
2:00pm – 3:45pm	Panel 10: Follow-up on first-round recommendations
<p><u>Place:</u> <i>Office of the President of the Council of Ministers (Av. Armendariz 339, Miraflores district).</i></p>	<p>Topic:</p> <ul style="list-style-type: none"> • Systems or mechanisms developed to follow-up on the recommendations of the First Round. • Access to information: <ul style="list-style-type: none"> - Progress with publishing the procedure for accessing information in public agencies' Sole Texts of Administrative Procedures (TUPAs). - Progress with reviewing public agencies' web sites, in order to ensure that they publish the information required to appear on those sites by the Law on Transparency and Access to Information and its Regulations. - The diagnostic assessment carried out by the Public Administration Secretariat into the factors that have negatively affected the effectiveness of the enforcement of the right-to-information provisions. - Progress made and difficulties faced by the General Archive of the Nation in optimizing public institutions' archive systems to facilitate access to public information. - Progress with preparing the new Regulations of the Law on Transparency and Access to Public Information. <p><u>Participants:</u></p> <ul style="list-style-type: none"> - Rocío Vargas, Coordinator for Ethics, Transparency and Participation, Secretariat for Public Management - Mónica Espinoza, Advisor, Secretariat for Public Management - Nicolás Cruces, Legal Assistant, General Archive of the Nation
3:45pm – 4:45pm	Panel 11: Follow-up on first-round recommendations

<p><i>Place: Office of the President of the Council of Ministers (Av. Armendariz 339, Miraflores district).</i></p>	<p>Topic:</p> <ul style="list-style-type: none"> • Mechanisms to encourage civil society participation: <ul style="list-style-type: none"> - Progress under the National Open Government Plan (Resolution No. 085-2012-PCM of April 10, 2012). - Creation of the Working Group to review the regulations of and implement the Law on Transparency and Access to Public Information. - Progress expected in the evaluation of the Law on the Rights of Citizen Participation and Oversight. - Progress with the launch of the “Infobarómetro” tool (page 116 of Peru’s reply).
	<p><u>Participants:</u></p> <ul style="list-style-type: none"> - Rocío Vargas, Coordinator for Ethics, Transparency and Participation, Secretariat for Public Management - Mónica Espinoza, Advisor, Secretariat for Public Management
<p>16:45 hrs. – 17:30 hrs.</p>	<p>Panel 12: Follow-up on first-round recommendations</p>
<p><i>Place: Office of the President of the Council of Ministers (Av. Armendariz 339, Miraflores district).</i></p>	<p>Topics:</p> <ul style="list-style-type: none"> • Conflicts of interest: <ul style="list-style-type: none"> - Current situation of bills No. 497-2011/CR and No. 242-2011/CR. - Progress with the preparation of the draft Law of Ethics, Incompatibilities and Responsibilities. - Outreach and regular training activities on conflicts of interest. - Progress with the preparation of the draft Law Regulating Sworn Statements of Interests by State Employees.
	<p><u>Participants:</u></p> <ul style="list-style-type: none"> - Enzo Paredes, Advisor of the General Coordination, High-Level Anticorruption Commission - Juan Carlos Cortés, Executive President of the Civil Service Authority (SERVIR).
<p>5:30pm – 6:30pm</p>	<p>Informal Meeting between the representatives of the Subgroup Member States and the Technical Secretariat.</p>

6:30pm – 7:00pm	Final meeting ^{235/ 1} between the representatives of the country under review, the Subgroup Member States, and the Technical Secretariat.

235. The third paragraph of provision 20 of the *Methodology for Conducting On-site Visits* states: “At the end of the on-site visit, a meeting shall be held, to be attended by the Subgroup experts, the Technical Secretariat, and the Lead Expert of the State under review and/or the official appointed in his stead in accordance with rule 10, second paragraph, of this *Methodology*. That meeting shall identify, if applicable, the information that, for whatever reason, the State under review is still to submit through the Technical Secretariat and the deadline within which it is to do so, and it shall also coordinate any other pending matters arising from the on-site visit.”

**CONTACT AUTHORITY OF THE COUNTRY UNDER REVIEW FOR THE
COORDINATION OF THE ON-SITE VISIT AND REPRESENTATIVES OF THE MEMBER
STATES OF THE PRELIMINARY REVIEW SUBGROUP AND THE TECHNICAL
SECRETARIAT OF THE MESICIC**

COUNTRY UNDER REVIEW:

PERU

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