



Americas Regional Department

# Consolidando el cambio:

LA CONVENCION INTERAMERICANA  
CONTRA LA CORRUPCIÓN EN SU SEGUNDA DÉCADA

Status and Challenges  
of the Implementation of the  
**Inter-American Convention  
Against Corruption in the region<sup>1</sup>**

## I. Purpose of the Report and Methodology

The purpose of this report is to examine the degree to which the States Parties to the IACC have implemented the Convention, as well as how civil society's involvement has impacted MESICIC. We will also identify what major challenges lie ahead in the coming decade and propose strategies to overcome them.

The main source of information used in preparing this paper were the reports submitted by the members of Transparency International's network of national chapters in the Americas. These reports were compared across countries, which allowed conclusions on common issues or areas to be drawn.<sup>2</sup>

The report will provide specific answers to the four categories of questions formulated in the terms of reference and test out a series of conclusions.

**II. Question 1: In what areas of the IACC has the most progress been made on a regional level? What practices have proven to be best practices within the public sector in complying with such areas? What lobbying strategies undertaken by civil society organizations have been successful? What collaborative models and/or experiences between the State and civil society have been successful in promoting and implementing the Convention? Please describe these experiences and explain what indicators were used for your impact/success assessment.**

**Greater progress at the regional level and best practices in the public sector:**

### ■ Access to Public Information

In the ten years that have passed since the IACC was adopted, 13 governments in Latin America and the Caribbean have passed multiple pieces of legislation governing the right to access information –likely in an attempt to comply with the American Convention on Human Rights– either in a unified or scattered body of regulations, while in North America, the United States and Canada did so in 1966 and 1983, respectively.<sup>3</sup> Some countries merely recognize the right in their political constitutions or in human rights treaties.<sup>4</sup> Among the reports received, TI chapters in Argentina, Chile, Colombia, Guatemala, Mexico and Panama have recognized the progress made by their governments in this area, although to varying extents.<sup>5</sup> Chapters in the

United States, Nicaragua, Paraguay and Canada, in turn, fail to view the progress made in a positive light.<sup>6</sup>

### ■ Sworn Statements of Net Worth

A comparative analysis showed that the chapters in Argentina, Chile, the United States, Guatemala, Mexico, Panama and Peru believed that progress had been made at the regional level with regard to the systems that required sworn statements of net worth, while others reported otherwise.<sup>7</sup> What is certain is that the level of compliance across States is far from uniform. In studying each country separately, disparities emerge, as well as a subjective satisfaction regarding the progress made in comparison with the situation previously faced and the expectations created. For example, Argentina's Poder Ciudadano commended the notification system used by the Executive, recognized progress made by the Legislature in the area, but criticized the lack of implementation by the Judiciary. In turn, Panama's Fundación para el Desarrollo de la Libertad Ciudadana voiced its satisfaction with a database created by the Office of the Comptroller General of the Republic in close collaboration with civil society. This effort auspiciously increased the number of sworn statements received from 550 to 2,117 (almost four times more), although its report indicates that there is no consensus among authorities and deputies as to whether or not the statements should be made public.<sup>8</sup>

### ■ Public Contracting Systems

The chapters in Colombia, the United States, Guatemala, Mexico, Panama and Peru recognized the use of computerized systems as progress made toward improving their countries' public contracting systems, which has been the case in other countries as well (e.g. Chile, Honduras, Ecuador and the Dominican Republic). Such systems, however, are used with varying levels of efficiency and frequency across various governmental divisions.<sup>9</sup> The report submitted by Transparencia por Colombia notes that the use of the Internet in advertising calls for tender and requests for proposals has increased the level of transparency but says that the government has made less progress in developing systems for the procurement and oversight of goods and services that are effective in keeping corruption at bay. It also mentions the approval of an e-procurement system as one of the challenges faced. Consequently, and this comment is also applicable in the case of Argentina where the Internet is also used to increase transparency and enhance market competition, neither country had adopted an e-procurement system as done in

Mexico, Chile, Guatemala, Honduras, Peru and Ecuador. See the reports of the Second Round of the Committee of Experts of the States reviewed to date.

In the case of Peru specifically, Proética warns that despite having enhanced transparency, the State's logistical management efficiency levels have fallen. It also warned about the potential danger of reverting back to square one as a result of a recent restructuring decided by the Executive. In Argentina, Poder Ciudadano considered the adoption of a general regulatory system (Decree 1023/01) as progress but noted several shortcomings in how the system operates, as well as the absence of an e-procurement system. The implementation of the latter was expressly recommended by the Committee of Experts in its report issued in the Second Round, as in the case of Nicaragua, Paraguay and Uruguay as well.<sup>10</sup> As regards Paraguay, Nicaragua and Venezuela, in turn, this area has been listed among those where the least progress has been made.<sup>11</sup>

### ■ Passage of Criminal Regulations

Some reports received (from chapters in Colombia, the United States, Nicaragua, Peru, Paraguay, Venezuela) favourably highlight punishments for new crimes and reforms for such in order to implement the IACC (even though Peru's Proética notes progress, it warns that no legislation was yet in place for transnational bribery). This positive assessment essentially coincides with the findings of the Committee of Experts when examining the implementation of Article VI of the IACC in the countries reviewed during the Second Round to date.<sup>12</sup> In turn, Guatemala's Acción Ciudadana reports this topic as an area where little progress has been seen since Congress has not yet passed a bill submitted by the Executive. As such, offences such as illicit enrichment, influence peddling and undue use of information have not been classified as crimes. Panama's chapter also demands that a law (59/1999) be reformed to eliminate the submission of summary evidence as a condition for investigating the crime of unjust enrichment.

### ■ High-Level Oversight Bodies

Most of the reports noted progress in this area,<sup>13</sup> while others did not.<sup>14</sup> The balance is far from being positive in the least since if we take into account the conclusions of the Committee of Experts, little progress has been made in implementing the recommendations issued in this area during the First Round. The hemispheric report by MESICIC calculates that the Committee recommended, either anticipating high-level oversight bodies (in 12 cases) or strengthening those already in place (in 25 cases), while the findings in following up on the recommendations issued in the First Round during the Second Round were not encouraging either.<sup>15</sup>

The high-level oversight bodies must be technical bodies with the independence and competencies needed to accomplish their mission. They must be not bodies of a political nature and should be comprised of one or more individuals with renowned ethical reputations. Some States opt for the Hong Kong model in setting up a high-level oversight body (similar to Argentina's Anti-Corruption

Office), which has preventive and criminal prosecution competencies. Others decide to create district attorney's offices that are specialized in corruption and are located within the Office of the Public Prosecutor as well as set up ethics offices within the administration to handle preventive duties.<sup>16</sup>

### ■ Preservation and Proper Use of Public Funds

Four of the reports considered their internal audit and financial administration systems as progress.<sup>17</sup> During the First Round, the Committee of Experts recommended promoting the effectiveness of financial oversight or strengthening them in each State, a matter that is still awaiting full implementation.<sup>18</sup>

### ■ Successful Lobbying Strategies Undertaken by CSOs

On the whole, in parallel with democratic consolidation efforts, CSOs have become important players in shaping the public agenda in areas related to the prevention of and fight against corruption. In recent years, although with varying results, vehicles have been created to encourage civic involvement, such as public hearings, the use of a participatory approach in drafting regulations, and meetings with officials or congressional committees, which is more characteristic of countries of the Anglo-Saxon tradition such as Canada and the United States, although progress has been acknowledged in other countries as well.<sup>19</sup>

Canada is likely the most receptive to launching its lobbying strategies using varying civic involvement processes. Although no indicator or specific experience is cited, the public hearings held within congressional committees, consultative processes used to discuss public policy, meetings with officials, financial support from the government for CSOs who work in anti-corruption areas are mentioned.

With the exception of Peru's Proética and Venezuela, which deems the issue a future challenge,<sup>20</sup> all other chapters refer to alliances forged with other CSOs in order to achieve various objectives.<sup>21</sup>

While Chile Transparente regrets that it has neither designed a formal lobbying strategy or coordinated efforts with other CSOs, it favourably highlights certain individual achievements,<sup>22</sup> as well as its constant contact with legislators and authorities to secure their support and accelerate the passage of legislative initiatives. Transparencia Mexicana highlights as part of its lobbying strategy the launch of a website dedicated to consolidating information on the Anti-Corruption Conventions to which Mexico is party: [www.tm.org.mx/anticorruptcion](http://www.tm.org.mx/anticorruptcion) (in Spanish). Transparencia por Colombia highlights the transparency indexes that have transferred the visibility of the State to the national and departmental levels and the project to analyse the results entitled *Bogotá cómo vamos* (How we are doing in Bogotá) which calls for accountability on the part of the district administration. Meanwhile, the chapter in Panama highlights ongoing communication and media pressure as a successful lobbying strategy in demanding greater accountability and ensuring desired results are obtained.

## ■ Collaboration between the State and Civil Society

Many of the reports have pointed out instances of collaboration with the government on MESICIC.<sup>23</sup> For its part, the report on Canada favourably highlights the wide range of mechanisms used to involve civil society in public policy debates and the help received in order to attend important political events such as the OAS General Assembly and the Summit of the Americas; Chile Transparente notes its intervention in what is known as the «Pro-Transparency Short Agenda 2005»<sup>24</sup> and its collaboration on President Bachelet's Probity Agenda, which it is optimistic about despite the fact that no concrete results have been achieved because it is in its initial phase.<sup>25</sup> Panama's Fundación para el Desarrollo de la Libertad Ciudadana views cooperating with the Comptroller of the Republic to build a database of sworn statements (as already mentioned) as a successful experience. The fact that the foundation's representation to the National Council on Transparency against Corruption stepped down due to differences with the Council's Executive Secretariat was viewed negatively. Transparencia por Colombia resumed its online accountability project and the integrity pacts while Guatemala resumed cooperation with the Presidential Commissioner for Transparency to secure the information that was useful in building the performance indicators to measure compliance with the IACC (see note xxi).

### III. Question 2: In what areas of the Convention has the least progress been made on a regional level? What obstacles have been the greatest in preventing compliance with these areas?

## ■ Protection for Witnesses and Whistleblowers Who Report Acts of Corruption

Except Transparencia por Colombia, who did not mention the topic, and TI –USA, who noted that its country has adequate legislation in place, the 10 other reports received agreed that greater progress is needed on the part of governments in passing legislation that will protect witnesses and whistleblowers where the law is silent (Guatemala, Nicaragua, Panama, Peru, Mexico, Paraguay) or strengthens the programs already in place (Argentina, Canada, Chile, Venezuela). This information coincides, in turn, with the recommendations issued by the Committee of Experts in the reports for the Second Round that have been approved to date, except in the case of Paraguay, in whose report the Committee felt that Article 10 of Law 1562/00 of the Office of the Public Prosecutor provided protection for whistleblowers, even though it recommended more comprehensive protection.<sup>26</sup>

## ■ Difference between Theory and Practice

Multiple reports noted the difference between the existence of a regulation and actual adherence to it as an area in which no further progress had been made.<sup>27</sup> Undoubtedly, the most eloquent of all was the report on Nicaragua, which states that real solutions do not often lie with improved legislation –something that is equally necessary–, but rather with the institutions in charge of implementing the laws. It demanded the introduction of punishments for acts of corruption.<sup>28</sup> This

topic is undoubtedly tied to one of the remaining challenges noted below, that of a lack of political will.

## ■ Codes of Ethics in Public Service (standards of conduct, conflicts of interest, nepotism, gift system)

Weak codes of ethics were mentioned as a negative point by six of the reports submitted by the chapters in Chile, Colombia, the United States, Mexico, Panama and Paraguay, although not unanimously, since the reports on Argentina, Canada, Guatemala, Nicaragua, Peru and Venezuela acknowledged progress made in creating standards of conduct.<sup>29</sup> TI-USA warns about serious shortcomings in the conflict of interest system and lobbying in Congress in the country.<sup>30</sup>

Although standards of conduct exist in almost all States, a positive view would indicate to us that it is not about a lack of regulations, but rather than in many cases the regulations have shortcomings that prevent them from extending to all public officials.<sup>31</sup> In Paraguay, for example, the Committee of Experts issued a recommendation for the code to extend to all officials, and still today, a public ethics bill is under review in the country's Senate, or from being applicable in situations that could be considered as ethical violations.<sup>32</sup> Other problems identified are related to the fact that existing regulations are not applied in concrete cases. Both the report on Paraguay –which even commended the passage of a regulation on nepotism–, as well as those for Colombia, Guatemala, Nicaragua<sup>34</sup> and Panama –in cases of conflicts of interests–, voiced a complaint over the lack of effective implementation of existing regulations, which is corroborated with the 16 States who were told by the Committee to adopt measures to promote the «effectiveness» of the regulations.<sup>35</sup> Mexico has observed a lack of systematisation in the content, quality and uniformity across the codes of ethics used at different agencies under the Federal Public Administration.

## ■ Private Sector

The Canadian report placed the greatest emphasis of all the reports on the implementation of anti-bribery practices in the private sector, not because in the other States the issue is resolved but rather because the problem of transnational bribery and the prevention of post-Enron corporate fraud is certainly on the political agenda of the State.<sup>36</sup> This is the case in the United States as well with the passage of the Sarbanes-Oxley Act that strengthened the oversight of independent private audits and ethics programs within the companies. The IACC contains a number of provisions that refer to the private sector that have not seen significant progress,<sup>37</sup> such as the punishment of transnational bribery both for companies and individuals, accounting oversight mechanisms on the part of the State and the removal of tax benefits for those who pay bribes.<sup>38</sup>

## ■ Public Official Hiring

Hiring officials through processes that will ensure notification, equity and efficiency is one of the areas in which no substantial progress was made according to most of the reports studied.<sup>39</sup> The findings of the Committee of

Experts during the Second Round also indicated that this topic would remain pending for a number of the States reviewed.<sup>40</sup> Only Mexico, Peru and Nicaragua reported progress, albeit seriously questioned, in this area.<sup>4141</sup> The report on **Mexico** commends the implementation of the Professional Service Career for mid- and high-level positions with the Federal Public Administration.

#### ■ Adequate Systems for Public Revenue Collection and Oversight

Guatemala's Acción Ciudadana mentions that the revenue collection and oversight systems have remained intact since the ratification of the IACC and that the few reform efforts that have been made have not included the fight against corruption as a crosscutting issue. No other report mentioned this almost forgotten area, except Colombia, which listed it among the areas where progress had been made by its government.

#### ■ Studies on the Relationship between Equal Pay and Corruption

Transparencia por Colombia includes the provision contained in Article III, paragraph 12 of the IACC among the preventive measures that have not been implemented. Peru's Proética has even borne witness to the fact that the current administration has instituted a poorly understood cut-back in the salaries of high-level public officials and it is possible that these officials will leave public service in the medium or short term or remain in their positions and try to otherwise compensate for their low salaries.<sup>42</sup>

### IV. Question 3: Based on the experience from implementing the Convention during the first decade, what challenges are foreseen for the Convention during the next 10 years? Justify your answer. What potential strategies can be used to overcome these challenges?

#### ■ Obtain Greater Political Will

Any shift in public policy requires political will to bring it about.<sup>43</sup> Just as a government can support laws for political campaign financing or electoral systems that help them stay in power, having the representatives pass laws or implement policies that may run counter to their personal interests, such as preventive and punitive policies against corruption, poses a challenge.

In order to overcome this challenge, it is clear that positive or negative incentives must be created to push governments toward supporting the implementation of the IACC. Among positive incentives, strategies must be designed to prove to public officials or legislators that carrying out a more «efficient» or «transparent» administration, or proposing and passing bills, is also a path to staying in power or gaining popularity to move ahead in the political race.<sup>44</sup>

As far as negative incentives are concerned, the strategies must be geared toward strengthening horizontal oversight

mechanisms (the Judiciary, audit entities and other oversight bodies in general, streamlined international cooperation) and the so-called vertical oversight mechanisms, by exploring social oversight through active participation,<sup>45</sup> improving public awareness and data analysis (in which the media should be strategic allies of CSOs) and promoting greater coordination between the different international and foreign stakeholders so that corruption can be increasingly more influential when making decisions that affect a given State (political organizations such as the OAS, international lending agencies, multilateral cooperation organizations –such as the IDB and the World Bank– civil society, international chambers of commerce or investors).

#### ■ Strengthening Oversight of the Implementation of the IACC

MESICIC constituted a very important step forward in terms of what had been done before. It was set in motion in record time and currently works in a thought-out, continuous fashion through a webpage that is easily navigated.<sup>4646</sup> The MESICIC replaced the Working Group on Probity and Public Ethics. The most notable actions taken by this group, partly comprised by diplomats from States Party in the OAS, were the collection of responses to a self-evaluation questionnaire that the States were to answer about the regulations contained in their domestic laws that implemented the IACC and the execution of a cooperation agreement entered into with the IDB that financed the hiring of consultants to draft a report discerning to what extent the IACC criminal regulations had been implemented and suggest, if necessary, how they should be reformed.

TI-USA, in any event, issued an appeal for the Committee's work carried out through successive rounds to not hold up the actions of some governments, which seemed to be waiting for the Committee's reports before complying with the IACC.

Some reports introduce the idea of strengthening oversight of the implementation of the IACC or the MESICIC itself. The proposals included:

- ▶ Establish visits by the preliminary review subgroup in the countries reviewed as specified in the Rules of Procedure of the Committee;<sup>47</sup>
- ▶ Ensure the existence of a Commission and an Inter-American Court against Corruption, with supranational legal authorities to try corruption cases or create appellate bodies that will hear appeals when a government fails to fulfil their commitments;<sup>48</sup>
- ▶ Increase technical and financial support to ensure CSOs can promote the implementation of the IACC effectively. With this objective in mind, TI-USA proposed a public commitment from the Inter-American Fund Against Corruption and the Inter-American Development Bank.

The fact is that MESICIC was created as an institution of cooperation between the States and that its recommendations would not be binding. In international law, such are defined as *soft law* methods. Nevertheless, it

would be interesting to explore in the coming years how to raise a failure to comply with IACC or the recommendations issued by the Committee with a body with greater political pressure and/or enforcement before the OAS General Assembly or successive Summits of the Americas. The fact that corruption undermines democratic systems and curtails the enjoyment of economic, social and political rights is only the tip of the iceberg and it requires attention.<sup>49</sup>

Other proposals for improving MESICIC are more technical, such as scheduling visits. They also cite greater participation on behalf of civil society in the Mechanism, such as:

- ▶ the possibility of holding a meeting between CSOs and the experts from the review subgroup and the country under review;
- ▶ having more than the current allotted time of 10 minutes to present the report orally to the Committee;<sup>50</sup>
- ▶ scheduling the date set for submitting the civil society report after the date set for the submission of government reports. This way the CSOs can have access to information provided by the State prior to preparing their report. This saves time in researching information about current regulations or objective data, avoids unnecessary repetitions (since the CSOs tend to summarize the regulations) and allows them to focus on the real objective of civic participation, which is to contribute valuable technical judgments on the current regulations and results;
- ▶ more opportunities to participate in the meetings of the Committee of Experts or be permanent observers of Committee meetings;<sup>51</sup>
- ▶ standardizing the presentation before the Committee of Experts of progress reports on the implementation of the recommendations required of the States.
- ▶ allowing civil society to send progress reports to the Committee on the State's compliance with the recommendations.
- ▶ scheduling public events for public officials to report on the status of the implementation of different areas of the IACC separately (proposed by TI Venezuela).

#### ■ Include IACC Implementation in the UN Convention

The United Nations Convention against Corruption has complemented and raised the standards of the complex areas that are also addressed in the IACC (such as different international cooperation issues and the recovery of assets, purchases and contracting, private sector, witness protection). The Committee of Experts, as well as the States and CSOs, should thus use the UN Convention standards as a benchmark for fulfilling their respective responsibilities and roles in the future. The chapters in Colombia, the United States, Guatemala and Venezuela have addressed this area in their reports.

#### ■ Implementation of the IACC by Local Governments

Of the 28 States Party to the MESICIC, 6 are federal states

and the rest are unitary with different levels of political decentralization.<sup>52</sup> For political and logistic purposes, the efforts of the States and the Committee were focused more at the federal level, although there was a strong appeal made to the States to implement the IACC at all levels of government. Progress was made later at the provincial and local level in this area based on recommendations issued by the Committee, such as the Provinces Plan from the Anti-corruption Office of Argentina or Mexico's efforts with the Standing Commission of State Comptrollers – Federation, although some reports list this issue among future challenges (Argentina, Mexico) or areas of little progress (Canada, Colombia).<sup>53</sup> To complement this, Acción Ciudadana hopes to strengthen civil society technically at the local, national and regional level to ensure stronger arguments and positions.

#### ■ International Cooperation

Peru's Proética mentions in its report progress in instituting extradition mechanisms and regulations and the role played by the IACC in several important extraditions in the country. It also lists the matter among future challenges so clear, objective and mandatory guides are needed for extradition proceedings exist. The reports on Colombia and Nicaragua also view greater international cooperation in strengthening the recovery of assets, client confidentiality, legal mutual assistance, the exchange of experiences and joint training as a challenge.

#### ■ Training and Education

The reports from Nicaragua's Ética y Transparencia and TI Venezuela included the development of training programs for public officials in areas related to the fight against corruption, coordination with national universities to develop courses on this issue, and the promotion of a civic culture through the national education system and CSOs.

#### **Question 4: How have the contributions made by civil society groups had an impact on MESICIC? To what extent did the final reports issued by the Committee of Experts take into account the recommendations from civil society?**

Without going into complex classifications, two types of impact can be identified: one on civil society itself and another on the Committee of Experts.

First, the reports presented by civil society to MESICIC have an «inward» impact, that is, on the CSOs themselves. In preparing the reports, the CSOs have a golden opportunity to become familiar with and thoroughly review domestic regulations and the effective application of such. In addition, it constitutes a good opportunity for certain governments to «display» the information - especially in terms of information on the specific implementation of the regulations, making it in turn possible for civil society to organize lobbying activities in order to have an impact on certain areas of public policy. In some cases, the reports have also helped build strategic alliances between CSOs and strengthen ties of partnership between them and public officials or bodies that can be useful in another area of cooperation.

As far as the impact and effectiveness of the civil society reports on the Committee of Experts, in some cases they certainly have helped in reviewing the governments more accurately. The value added by the information provided by civil society goes beyond simply contributing objective information that be compared to the information provided by the State, as it can also include value judgments, which cannot be included in a government-issued report in some cases. It is worth noting that these judgments have technical, not political, grounding since the Committee of Experts cannot take the latter into consideration.<sup>54</sup>

Secondly, we can state that the Committee of Experts took the civil society reports into consideration on the whole. Most of the time, the references made by the Committee were a way to corroborate what the government reported in their response to the questionnaire.<sup>55</sup> Another type of reference was used by the Committee of Experts when the civil society report served to alert the Committee to certain shortcomings in the regulations or in the implementation of certain public policies.<sup>56</sup>

It would be interesting to examine if there have been important considerations in the civil society reports that were not taken into account by the Committee of Experts. In the case of Paraguay, for example, although a civil society report was submitted, this report was not cited in the final report of the Second Round.

In Argentina's case, civil society submitted information about the lack of standardized competitions as set forth in the regulations for appointing directors to various regulatory bodies for public services, which was not mentioned in the final report. There was also concern over the lack of access to information –despite repeated requests and searches on different web pages– about contracting systems used for fiduciary funds and public-owned companies. This prevented civil society from analysing whether the regulations did or did not meet the IACC principles.<sup>57</sup> The report recommends enhancing legislation on public works, which could be interpreted as including the public works performed by the national government, not the provincial

states, through some trusteeships. This would have warranted a recommendation on the part of the Committee for Argentina to follow up on this information in the future in order to monitor the review.

## **V. Conclusions**

The implementation of the IACC is part of a process that needs to increase its institutional nature.<sup>58</sup> In these 10 years, progress has been made in the implementation of the IACC, albeit in an inconsistent fashion. Some areas were given more attention, such as the sworn statements of net worth or the access to information laws, than others that were hardly mentioned, such as having adequate systems in place for government revenue collection and oversight. Even when the greatest challenge for the CSOs is obtaining greater political will to spur changes in societies where the power is still marred by political patronage and illegal political financing –the greatest hole in the IACC– in cases where progress was made, the implementation was, on the whole, far from satisfactory if compared to the standards for best practices that exist in the area. In order to evaluate whether or not a given public policy is well implemented, or propose how to do so, the CSOs should work with best practice standards that set the pace, as the Principles of Lima document has done in the area of access to information. Model laws, guiding principles authored by an international organization or think tank, comparative legislation or guidelines from other conventions and reports from the Committee themselves can be useful in devising a minimum standard of quality.

As regards MESICIC, giving its recommendations more political weight or creating additional international bodies as suggested in this report would be very useful in ensuring compliance with the IACC.

In short, over the coming years, MESICIC and the States must rise to the expectations created and the CSOs must receive training in newer, more complex areas that will require technical proposals and imagination in order to secure the political will needed to implement them.

Buenos Aires, 6 February 2007

<sup>1</sup> This report was prepared by consultant Nicolas Dassen, formerly Argentina's lead expert to MESICIC and general coordinator of the civil society report submitted to MESICIC for Argentina's review in the Second Round.

<sup>2</sup> Reports were received from **Argentina** (Poder Ciudadano); **Canada** (Transparency International Canada); **Chile** (Corporación Chile Transparente); **Colombia** (Transparencia por Colombia); **United States** (Transparency International USA), **Guatemala** (Acción Ciudadana); **Mexico** (Transparencia Mexicana); **Nicaragua** (Ética y Transparencia); **Panama** (Fundación para el Desarrollo de la Libertad Ciudadana); **Paraguay** (Transparencia Paraguay); **Peru** (Proética); and **Venezuela** (Transparencia Venezuela). Likewise, the MESICIC hemispheric report for the first round of review, the Committee of Experts reports for the first and second round, the responses provided by the States Party and the civil society reports were also consulted. For further information about the members of TI's network of national chapters in the Americas, in addition to their activities related to the Anti-Corruption Conventions, please visit: [http://www.transparency.org/regional\\_pages/americas/conventions](http://www.transparency.org/regional_pages/americas/conventions)

<sup>3</sup> See the report prepared by the OAS Office of the Special Rapporteur for Freedom of Expression at <http://www.cidh.org/relatoria/showarticle.asp?artID=229&IID=1> or the website: <http://www.accesoalainformacion.org/archivos/Cuadro Comparativo - Am Lat.pdf> (in Spanish) maintained by the Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento (CIPPEC) [Centre for the Implementation of Public Policy for Equity and Growth] which cites **Belize, Chile, El Salvador, Jamaica, Mexico, Panama, Peru** and **Trinidad and Tobago** as countries with regulations governing access to information. I believe that the **Dominican Republic** should be added (Law 200-04 and Regulatory Decree 130-05) and **Argentina** –since at least at the Executive level it has regulations in place that respect international standards established in this area (Decree 1172/03), absent a law that includes the other branches, as in **Guatemala** (Governmental Agreement 645/2005)-. **Costa Rica** and **Brazil** have different regulations in this arena, albeit scattered, which prompted the Committee to recommend the consolidation of the regulations under a single law.

<sup>4</sup> **Brazil, Colombia, Haiti, Honduras, Nicaragua, Paraguay, Venezuela.** The absence of an access to information law under a common body of laws does not necessarily mean that in these countries no administrative procedures or electronic tools exist to uphold the right in question. Without going into further detail, the report prepared by Transparencia por Colombia has favourably highlighted the major progress made by the government in improving the transparency of public information.

<sup>5</sup> The report on **Argentina** recognizes as progress the passage of a decree (1172/03) that regulates the access to information in the Executive branch and several provincial and local regulations, but labels the failure to pass a law that will encompass the other two branches of the federal government (the Legislature and Judiciary) as a major shortcoming. The report on **Chile** recognizes as progress the reform undergone by the Political Constitution of 2006, which under the newly introduced Article 8 sets forth the principle of announcing the actions and resolutions of governmental bodies –even in terms of outlining– and emphasizes a Presidential Note on the active transparency and disclosure of information by the federal administration; in **Mexico**, the report highlights the passage of a law at the federal

level and that there is local legislation in place in 30 of the 32 states.

<sup>6</sup> The report prepared by TI **USA** indicates that in the past few years, there has been a tendency to limit access to information. In 2001, the Attorney General issued a memorandum facilitating the government to use its discretion for exemptions to disclosure, while in 2003, the Bush administration created a regulation to make it easier for the government to classify documents or extend their status as classified documents. In addition, there has been criticism noting that the implementation of such has become inefficient and slow. The report prepared for **Paraguay** indicates that there is a lack of legislation in this area. It further cites the Senate's rejection of a bill passed by half of all deputies as a major setback. Meanwhile, TI **Canada** stated that its government made no progress due to the fact that its legislation has become bureaucratic and complicated, requiring that a request for information accurately identify what type of information is requested in order to be accepted.

<sup>7</sup> In the countries cited, although the progress made by governments has been noted, the systems were implemented differently; another country which reported progress was the **Dominican Republic**, where the Executive recently ordered that the statements be prepared electronically and that the Office of the Attorney General would make the information available online to any interested party (Regulatory Decree 287/06 of Law 82-79).

In turn, the chapter in **Paraguay** mentioned the lack of a Sworn Statement of Assets law; Transparencia por **Colombia** noted that the submission of net worth statements has not had any positive outcome. The report prepared by **Nicaragua** questions the non-obligatory nature of publicly disclosing the probity statements, noting a lack of systems to confirm and examine the content of the probity statements at the Office of the Comptroller General of the Republic in order to detect illicit enrichment and control any conflicts of interest and a lack of coercive measures to have officials who leave the public arena submit their statements. TI **Venezuela** announced that the Office of the Comptroller General confirmed in 2005 only 4 net worth statements of an unspecified number submitted by public officials required to do so.

As regards the public disclosure of statements, the express authorization in advance from the declaring party is required in **Mexico** but not in other countries such as **Colombia, Guatemala, Nicaragua, Panama, Uruguay** (only the statement submitted by the president and vice president is made public) or **Venezuela**. We would do well to note that the Committee of Experts recommended that 20 of the 28 States Party to the Mechanism «regulate the conditions and procedures for publicly disclosing the statements» (See the hemispheric report of the First Round of MESICIC, published at [www.oas.org](http://www.oas.org)).

<sup>8</sup> In **Panama**, the regulations contained in the Law of Transparency have been deemed illegal by the Third Chamber of the Supreme Court of Justice since 21 May 2002. See Panama's fourth progress report, published at [http://www.oas.org/juridico/spanish/mec\\_avance\\_panVI.pdf](http://www.oas.org/juridico/spanish/mec_avance_panVI.pdf) (in Spanish).

<sup>9</sup> The report submitted by Transparencia por **Colombia** notes that the use of the Internet in advertising calls for tender and requests for proposals has increased the level of transparency but says

that the government has made less progress in developing systems for the procurement and oversight of goods and services that are effective in keeping corruption at bay. It also mentions the approval of an e-procurement system as one of the challenges faced. Consequently, and this comment is also applicable in the case of **Argentina** where the Internet is also used to increase transparency and enhance market competition, neither country had adopted an e-procurement system as done in **Mexico, Chile, Guatemala, Honduras, Peru** and **Ecuador**. See the reports of the Second Round of the Committee of Experts of the States reviewed to date.

<sup>10</sup> **Argentina** mentions the implementation of an electronic public contracting system and the passage of more modern legislation, which would increase advertisement and lower minimum amounts to call for competitive bids, a more efficient planning of public contracting by creating Annual Procurement Plans, as well as the adoption of regulations that will prevent banned providers from changing their legal name to continue competing in procurement processes.

<sup>11</sup> The **Paraguayan report** believes that the creation of a body to evaluate the overall contracting process and recommend a contracting system that promotes development cannot be put off. It cites a 2004-2006 public contracting performance and integrity index as an indicator.

The chapter in **Nicaragua** classifies the involvement of SMEs in competitive bidding processes as very conservative and noted a lack of information contained in bid results.

**TI Venezuela** warns about the abuse of direct purchasing using «emergency» status, evading the Procurement Act. The final statistic offered by this chapter based on official information indicates that 95% of contracts are awarded directly.

<sup>12</sup> **Paraguay** and **Uruguay** have fully implemented Article VI; **Argentina, Nicaragua** and **Honduras** must modify the classification of several actions. The only country with major shortcomings was **Ecuador**, who was recommended to introduce reforms in its criminal regulations that would implement the Convention.

<sup>13</sup> The report on **Argentina** commended the creation of an Anti-Corruption Office; **TI Canada** noted the reports of certain ethics officials sent to the Legislature and the appointment by the Directorate of the Treasury of a high-level official for internal oversight as favourable practices; **Transparencia por Colombia** favourably highlighted the strengthening of high-level oversight bodies; **Guatemala's** Acción Ciudadana celebrated the creation in 2004 of the Presidential Committee on Transparency—a plural advisory body—in charge of follow-up to the IACC and the formulation of government anti-corruption strategies, and the position of Presidential Commissioner for Transparency, held by an individual with a technical background who drives regulations relating to access to information and ethics; **Mexico** has an Inter-Agency Transparency and Anti-Corruption Committee (CITCC), a body within the Executive in charge of coordinating anti-corruption efforts and ensure transparency in government management in the Federal Public Administration (APF) and with the Secretariat of Public Duty. **Nicaragua's** Ética y Transparencia has emphasized its close cooperative relationship with the Office of Public Ethics created, demanding greater political independence for this Office, ensuring that the General Budget of the Republic has the necessary allocations for its operations and greater inter-agency coordination with other oversight bodies as future challenges. **TI's** chapter in **Paraguay** noted the creation of the Anti-Corruption Specialized Unit within the Office of the Public Prosecutor and the creation of the Transparency and Civic Involvement Units within public institutions—which are still not up and running correctly due to a lack of awareness about their

existence and not having information available to the general public-, but also considered major support from the government for the Office of the Comptroller General of the Republic in its capacity as comptroller of the statements of assets and income as a task that cannot be put off **TI Venezuela** noted the creation of the National Ministerial Anti-Corruption Committee with prevention, transparency and anti-corruption investigative powers.

<sup>14</sup> Among the latter, **Chile** notes that there are no stable bodies in charge of tackling corruption or promoting transparency in a dedicated fashion. **Panama** points out its concern over the «innocuous» activities of the National Council for Transparency against Corruption.

<sup>15</sup> During the review of the Second Round of MESICIC, we can see that **Nicaragua** is still in the process of implementing the recommendations to strengthen its oversight system; **Uruguay** was told to pay closer attention to the recommendation received without acknowledging that any progress had been made. As for **Paraguay**, the Committee issued similar recommendations, although it acknowledged progress made. In the case of **Honduras**, although progress was seen, it was insufficient, and the Committee took note of the difficulty faced by the government in increasing the budget for high-level oversight bodies, which indicates that a lot must be done. In **Ecuador**, an inter-agency workshop held to settle competition problems between various bodies without arriving at a solution was noted as progress and the Committee took note of the difficulties expressed both by the State and civil society.

<sup>16</sup> See Jeremy Pope, *The Need for and Role of an Independent Anti-Corruption Agency*, authored for Transparency International.

<sup>17</sup> Reports on **Canada, Colombia, Peru** and **Venezuela**.

<sup>18</sup> According to the hemispheric report from the First Round, the Committee recommended measures for promoting the effectiveness of the regulations for preserving public resources in the case of 19 States; strengthening provisions relative to the oversight of public spending in the case of 19 States; and strengthening provisions relative to accountability in the case of 7 States. States must focus on strengthening the independence (political, technical and budgetary) of the authorities and auditors of these bodies, participatory and public preparation of the annual auditing plans, previous or accompanying oversight measures and not only subsequent measures, creation of auditing committees to perform follow up to compliance with the reports, sufficient authority to collect documentation and file complaints.

<sup>19</sup> **Canada** is likely the most receptive to launching its lobbying strategies using varying civic involvement processes. Although no indicator or specific experience is cited, the public hearings held within congressional committees, consultative processes used to discuss public policy, meetings with officials, financial support from the government for CSOs who work in anti-corruption areas are mentioned.

**Transparencia por Colombia** notes accountability public hearings that use mass media, in addition to the fiscal audits performed by the Office of the Comptroller General of the Republic and the involvement of CSOs.

**Guatemala's** Acción Ciudadana commended a set of laws from 2002 intended to improve civic involvement at the local level that included the General Decentralization Law (14-2002), the Development Council Law (decree 11-2002) and the Municipal Code (12-2002).

<sup>20</sup> As a negative point, the report on **Peru** indicates that the country still has limited experience in lobbying efforts related to the IACC

and that indeed the major challenge for the CSOs and the general public is to introduce issues related to the convention on the public agenda by making them interesting and tangible. **TI Venezuela** enjoys alliances with other CSOs as a challenge for the future so that they may jointly take on any non-compliance with the IACC on the part of any signatory state.

- <sup>21</sup> **Argentina's** Poder Ciudadano: its alliances with other CSOs in order to raise awareness and monitor the IACC, such as the civil society reports submitted to the Committee of Experts and the new regulations passed by the government, the content of which several CSOs had a key role in drafting: Decree 1172/03 on Strengthening Democracy –with regulations governing Access to Information, Lobbying, Participatory Approach to Drafting Regulations, free advertisement in the Official Gazette, regulations for public hearings and meetings of the Board of Regulatory Bodies that are open to the public-, or «A Court for Democracy» documents which prompted a group of CSOs to promote the adoption of a consultative and public process prior to appointing judges to the Supreme Court and lower judges (Decrees 222/03 and 588/03), and changes for the Supreme Court Justice to make the internal circulation of files transparent, regulate the receipt of Amici Curiae briefs in instances of institutional importance and improve the information posted on its website.

Transparencia **Paraguay** highlights its alliance with other CSOs to create a standing citizen observatory formed by 10 CSOs to follow up on the implementation of the IACC, in addition to its public contracting integrity and performance indicator that yield worrisome results. One of the observatory's most important actions was a campaign regarding a corruption case that involved the acting president of the Chamber of Deputies.

Acción Ciudadana reports that in **Guatemala**, the group has been strengthened by the creation of a «Task Group for Follow-up on IACC Implementation,» led by said organization and comprised by 8 CSOs, all signatories of a letter of understanding that grants rights, assigns obligations and establishes internal mechanisms of operation. A concrete result has been a map of IACC compliance indicators methodologically developed to measure current legal framework and institutional performance. These indicators found that the State had complied with 3 recommendations issued by MESICIC, partially complied with 9 and 19 remained unfulfilled.

**Nicaragua's** Ética y Transparencia reports that although there is no national strategy prepared by civil society, what is certain is that it has not been successful in forming coalitions or groups that focus on different areas of the IACC; some of these strategic alliances work in the area of access to information; others toward adopting a new penal code, citizen complaints, social oversight, anti-corruption campaigns, and raising the profile of the IACC. Most of these strategies have helped the passage and reform of standards regarding government ethics, public contracting and government employment, as well as having the National Assembly deciding on bills relating to the new Penal Code and the Law of Access to Public Information. Its lobbying campaigns led to the incarceration of various public officials accused of corruption and the recover of assets and goods originating from acts of corruption.

- <sup>22</sup> The CSO Pro Acceso case that culminated in OAS' condemnation of the Chilean government for violating the right to access information.
- <sup>23</sup> **Argentina, Chile and Mexico.** The report on **Peru** only mentions collaboration on MESICIC, noting that unfortunately other successful models cannot be offered. However, in the section on greater progress, the report indicates that the participatory

budgets have been a very interesting exercise but that the still weak human and social capital of an overwhelming number of communities prevent the experience from being fully take advantage of or that government officials do not seriously consider the decisions made by the citizenry.

**Nicaragua's** Ética y Transparencia is likely the civil organization that most emphasizes its cooperation with the Office of Public Ethics of the State within the framework of MESICIC. The State shared with the CSOs the responses to the questionnaire from the Committee of Experts and have even presented the overall report before the Committee.

- <sup>24</sup> Consists of a government initiative to promote a series of laws tied to the IACC.
- <sup>25</sup> Bills on access to information, conflicts of interest, lobbying, political and electoral transparency, internal government audits, transparency in public services and government post competition.
- <sup>26</sup> The States reviewed include **Argentina, Ecuador, Honduras, Nicaragua, Paraguay and Uruguay.** The Committee recommended that **Argentina** strengthen its existing mechanisms, as well as **Ecuador, Honduras, Paraguay and Uruguay,** while it recommended that **Nicaragua** pass legislation.
- <sup>27</sup> Reports on **Argentina, Colombia, Guatemala, Panama, Paraguay, Peru and Venezuela.** The report on **Colombia** linked this topic to the duty of the State to keep the standards of conduct for public officials «alive,» stressing that the penalties faced lack effectiveness. **Panama's** chapter believed the fact that regulations governing conflicts of interests not having been implemented was behind it, as did **Guatemala's** Acción Ciudadana. The report on **Paraguay** mentioned this problem when referring to the regulation on nepotism. **TI Venezuela** reported that some laws could not be implemented. For example, it cites the entry into the administrative career of public officials since even though ample regulations exist on the matter, every year the number of government employees increases without notice being issued about competitions to fill the vacancies.
- <sup>28</sup> Ética y Transparencia relates this problem to the weakness of oversight bodies, the pending reform of the Electoral Law and the slow implementation of the laws governing civil service, public administration and a judicial career.
- <sup>29</sup> In the case of **Peru**, it is even reported that relative progress has been made in the oversight of conflicts of interest, nepotism and political patronage, although a strong principle of cronyism at many levels of public administration.
- <sup>30</sup> **TI-USA** mentions that the results of the legislative elections of 2006 were marked by a series of corruption scandals involving legislators and private sector interests. It reports that the transparency of the system must be enhanced and the regulations regarding gifts, meals and travels sponsored by lobbying groups tougher. It also suggests removing the self-regulation system for the regulations that currently exist in both houses (since it is rarely used and the few penalties that it imposes are weak) and replacing it with an independent Ethics Committee with the necessary experience and abilities to investigate and recommend penalties.

- <sup>31</sup> In **Paraguay**, for example, the Committee of Experts issued a recommendation for the code to extend to all officials, and still today, a public ethics bill is under review in the country's Senate.

- <sup>32</sup> For example, in **Argentina**, the lack of a period in which situations where a conflict of interests may arise after an official leaves public service can still be investigated; in the report for **Chile**

weaknesses in the conflict of interest regulations are noted. **Panama's** chapter mentions the absence of a ban on state concessionaires preventing them from making donations during election campaigns.

<sup>33</sup> Of 28 States Party to the Mechanism, the Committee of Experts recommended 24 of them establish guidelines geared towards preventing conflicts of interest following the performance of public service, 11 were told to establish particularly restrictive provisions to prevent conflicts of interests among high-level officials and 12 were recommended to adopt measures for all officials, without exceptions. See Annex VI of the hemispheric report of MESICIC.

<sup>34</sup> As a future challenge, the report on **Nicaragua** suggests publishing a glossary of definitions and situations of conflicts of interests with the caveat that the officials it extends to must abstain from engaging in such situations and specify what activities are expressly prohibited in the case of individuals who leave public service.

<sup>35</sup> See Annex VI of the hemispheric report.

<sup>36</sup> TI **Canada** reports little attention among small- and medium-sized enterprise (SMEs) relating to business compliance in areas of anti-corruption issues, adding that the oversight mechanisms in place in the accountability of the companies continue to be weak. Such shortcomings include a record of all operations, including those of subsidiary companies. **Peru's** Proética included among its remaining challenges the punishment of transnational bribery in all States Party to the IACC. **Ética y Transparencia in Nicaragua** calls on the fact that the business sector to be more informed of the regulations and anti-corruption efforts and that activities geared towards increasing the company's social responsibility are carried out.

<sup>37</sup> Except in the case of **Argentina, Brazil, Canada, Chile, United States** and **Mexico**, who should implement measures –even at different levels of efficiency– to oversee the private sector since they are States Party to the OECD Convention on Combating Bribery of Foreign Public Officials.

<sup>38</sup> **Transparencia por Colombia** includes the latter as pending.

<sup>39</sup> The report on **Argentina** cited irregularities in backgrounds and criteria prepared to cover needs; irregularities in selecting offerors to cover demand; the implementation of regulations that govern competitions depends on the personnel that comprises the selection committees; use of formal competitions to appoint staff previously selected for political or personal reasons.

**Transparencia por Colombia** complained that cronyism networks were still at play in the hiring of staff although it did commend the SIIF (Unified System of Personal Information).

The report on **Paraguay** indicated the need to promulgate and pass a Law of Public Service and effectively implement the public service career.

Acción Ciudadana stated that in **Guatemala** the system for hiring public officials dates back to the 1960s, have loopholes and catches where discretion can be used and fails to promote competitive, transparent careers based on merit.

TI **Venezuela** included the topic under a negative light as an example of the difference between theory and practice (see note xxvi).

<sup>40</sup> The Committee of Experts recommended that **Uruguay** and **Paraguay** provide hiring systems for officials based on the requirements included in the IACC. It also noted that **Honduras** must promote the effective implementation of regulations on

government employment while **Argentina, Ecuador** and **Nicaragua** must enhance their systems.

<sup>41</sup> The report on **Mexico** commends the implementation of the Professional Service Career for mid- and high-level positions with the Federal Public Administration.

Although the report on **Nicaragua** views the passage of the Civil Servant Public Administration Law, the Municipal Public Administration Law and the Judicial Career Law favourably, it indicates that several difficulties have arisen in implementing the system. Such included the inflexibility of the deadlines established by the Civil Service and Public Administration Career Law and in the matrices of obligations with multilateral organizations and donor countries to institute the Civil Service System; the reluctance for change toward a new culture, which also arises among higher level public officials; technical shortcomings and in the management of human resource units; financial resource constraints in formulating and implementing a tax policy based on equity and fairness and constant changes in the organic structures of public institutions.

**Peru's** Proética views the passage of regulations related to the appointment of trusted public officials and procedures for appointing regulatory body officials as positive but notes that the regulations are rarely met and are inefficient and very weak.

<sup>42</sup> A similar limitation existed in **Argentina** during the worst years of its last economic crisis.

<sup>43</sup> To a certain extent, the TILAC chapter reports included this matter as a remaining challenge. The most articulate is likely the report prepared by **Guatemala's** Acción Ciudadana, which names the country's Congress as the primary obstacle to implementing the IACC.

With regard to contracting, the programs put forth by **Transparencia por Colombia** and **Argentina's** Fundación Poder Ciudadano can serve as examples of the results achieved with the support of public officials. TI **Venezuela** proposes awarding public officials for their achievements.

<sup>44</sup> **See Challenge: How Should the Lack of Political Will Be Addressed? Published in the Utstein Centre, [www.u4.no](http://www.u4.no). The report from Argentina proposes promoting a regional strategy that will include raising awareness and engaging in advocacy activities jointly that include pressuring States in non-compliance with mass media material and spots and public demonstrations. The report submitted by Panama suggested greater pressure from citizens, which echoes the report from Mexico, which mentioned increased participation; the report prepared for Peru advocates for incentives within the inter-American system for countries that have complied with the IACC to a greater extent. Ética y Transparencia from Nicaragua stressed the need to implement the judicial career law, demanding an improvement in the selection of independent and honest judges, comptrollers and public prosecutors. One can also consider increasing impact litigation, referring to the violation of collective rights (in Argentina, the litigation initiated by some CSOs managed to suspend rate hikes for public services on grounds that the public hearings outlined in the regulations were not held).**

<sup>45</sup> The MESICIC replaced the Working Group on Probité and Public Ethics. The most notable actions taken by this group, partly comprised by diplomats from States Party in the OAS, were the collection of responses to a self-evaluation questionnaire that the States were to answer about the regulations contained in their domestic laws that implemented the IACC and the execution of a cooperation agreement entered into with the IDB that financed the hiring of consultants to draft a report discerning to

what extent the IACC criminal regulations had been implemented and suggest, if necessary, how they should be reformed.

- <sup>46</sup> Proposals from TI-USA and Transparencia por **Colombia**. It is important to highlight the recent approval of Article 33 of the Rules of Procedure of the Committee of Experts, which establishes, non-obligatorily, that the Committee may establish visits by the members of the subgroups to all reviewed States Party in future rounds. It would also be useful to review if all the recommendations made by the States Party Conference during their first meeting in 2004 to strengthen MESICIC were met.

This is a proposal from **Peru's** chapter. **Argentina's** Poder Ciudadano, **Guatemala's** Acción Ciudadana and TI **Venezuela** expressed similar proposals. The latter chapter adds the possibility of inviting governments to replace themselves with a public official responsible for implementing the IACC.

- <sup>47</sup> Transparencia por **Colombia** included the need to coordinate anti-corruption efforts with other movements (human rights, environmentalists, settlers and peace-keeping) among future challenges. One bill from **Argentina's** Anticorruption Office proposes classifying the IACC as a human rights treaty. As a challenge for the future, the report on **Peru** suggests that the administrative and ordinary justice systems of the States base their decisions on corruption cases on IACC provisions. Proposal from **Argentina's** Fundación Poder Ciudadano.

- <sup>48</sup> Proposals from TI-USA.

- <sup>49</sup> **Argentina, Brazil, Canada, United States, Mexico and Venezuela.**

- <sup>50</sup> In the case of **Canada**, the fact that the creation of an office to investigate and urge criminal action that will centralize transnational bribery cases was rejected because leaving the

matter in the hands of the police and public prosecutors of the different jurisdictions was preferred was noted with concern. Transparencia por **Colombia** notes the lack of institutional development in most municipalities, which is related to risk of corruption in the country.

- <sup>51</sup> For example, the government itself is unlikely to be in a position to be impartial when it comes to evaluating if a determined oversight mechanism is efficient or if it «adequately» implements the Convention. It is true that the experience of **Nicaragua** is an example of close cooperation, in which civil society presented a joint report with the government to the Committee of Experts. This invites discussion over the role of CSOs and an analysis of contexts that may vary from country to country.

- <sup>52</sup> Abundant examples can be found in the Second Round reports for **Ecuador, Honduras, Nicaragua and Argentina.**

- <sup>53</sup> An example of this type of reference is included in footnote 23 of **Nicaragua's** report on the Second Round where civil society warned that certain bodies had not been created to implement regulations on government employment.

- <sup>54</sup> The report recommends enhancing legislation on public works, which could be interpreted as including the public works performed by the national government, not the provincial states, through some trusteeships.

- <sup>55</sup> Building its institutional capacity exceeds the scope of this work, but the democracies in the Americas must be prepared to institutionally channel the demands and conflicts of various social sectors, uphold the most fundamental economic and social rights, provide greater access and independence to the law, respect the separation of powers and freedom of speech and develop better channels of discussion between the various political forces and social stakeholders.