



International Secretariat
Alt Moabit 96
10559 Berlin, Germany
Tel: 49-30-3438 20-0
Fax: 49-30-3470 3912
Email: ti@transparency.org
<http://www.transparency.org>

**RECOMMENDATIONS OF TRANSPARENCY INTERNATIONAL TO THE XXXV
REGULAR SESSION OF THE OAS GENERAL ASSEMBLY**

Fort Lauderdale, Florida, June 5-7, 2005

Transparency International (TI) is the leading civil society organisation devoted to the global fight against corruption. Through its international secretariat based in Berlin, Germany and around 90 national chapters world wide, TI works at the national and international levels to stop the supply of, and demands for, corruption. The strategic focus of TI is systemic and apolitical. TI implements awareness-raising campaigns about the damage corruption causes to social and economic development, particularly in developing countries. TI brings civil society, business, and governments together in a powerful coalition to achieve systemic reforms and greater levels of transparency and integrity. One of the strategic objectives of the organisation is to act at the national and international levels to ensure the implementation of international multilateral commitments.

For many years, the network of Transparency International's National Chapters in the Americas has actively promoted and monitored the implementation of international anti-corruption conventions at the national and regional levels.

TI has actively participated in every OAS General Assembly and in the Summit of the Americas since 1994. TI has presented several proposals and recommendations, some of which have been used in resolutions and conventions originating from those meetings. Notably this includes:

- The Inter-American Convention against Corruption (IACAC), and its ratification and implementation in every signing country.
- The Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC)
- The Meeting of Experts on Cooperation with Respect to the Denial of Safe Haven to Corrupt Officials and those who corrupt them, their Extradition, and the Denial of Entry and Recovery of the Proceeds of Corruption and their Return to their Legitimate Owners.

Of the current draft resolutions before the OAS General Assembly, Transparency International strongly supports Draft Resolution AG/doc. 4377/05 which establishes 2006 as the Inter-American Year of the Fight against Corruption.

At the same time, Transparency International has made a series of recommendations regarding Draft Resolution AG/doc: 4386/05 (“Follow-up on the Inter-American Convention against Corruption and its Program for Cooperation”) and Draft Resolution AG/doc. 4368/05 (“The Role of the Legislative Branch in Combating Corruption and Impunity in the Hemisphere”). Some of these recommendations have been implemented by the State Parties, while others have not. TI insists that this latter group of recommendations be considered by the XXXV General Assembly.

For that reason TI believes that it is crucial to present the following recommendations to the OAS members:

I. Recommendations on the adoption of international instruments:

1. In accordance with its support for Draft Resolution AG/doc: 4386/05 (“Follow-up on the Inter-American Convention Against Corruption and its Program for Cooperation”) and Draft Resolution AG/doc. 4368/05 (“The Role of the Legislative Branch in Combating Corruption and Impunity in the Hemisphere”), Transparency International urges OAS member states that have not done so, to consider signing and ratifying, ratifying, or acceding to, as the case may be:

- The Inter-American Convention against Corruption (IACAC) of 1996, which to date has been ratified by 33 of the 34 OAS member states.

- The United Nations Convention against Corruption (Merida Convention) of 2003, which to date has been ratified by 24 countries, of which four are OAS member states. Article 68 of that Convention provides that it will enter into force when 30 states have ratified it. Transparency International urges OAS member states that have not yet done so to ratify the Convention during 2005 so that it will enter into force in 2006.

- The Inter-American Convention on Mutual Legal Assistance in Criminal Matters of 1992.

- The United Nations Convention against Transnational Organised Crime (Palermo Convention) of 2001.

2. Transparency International supports paragraph 3 of Draft Resolution AG/doc: 4386/05 (“Follow-up on the Inter-American Convention Against Corruption and its Program for Cooperation”) and paragraph 2 of Draft Resolution AG/doc. 4368/05 (“The Role of the Legislative Branch in Combating Corruption and Impunity in the Hemisphere”), under which State Parties should take the necessary measures, including the passage or amendment of laws, to strengthen their domestic laws to meet their commitments under the Convention.

In this regard, TI strongly encourages the legislatures of the State Parties to IACAC to approve legal initiatives that will permit the inclusion in their penal laws of the crimes contemplated by the convention.

II. Recommendation on the Follow-up Mechanism for the implementation of the Inter-American Convention against Corruption (MESICIC) and on the Follow-up of IACAC:

Transparency International supports paragraph 5 of Draft Resolution AG/doc: 4386/05 (“Follow-up on the Inter-American Convention against Corruption and its Program for Cooperation”), which addresses the strengthening of MESICIC. Specifically, Transparency International supports sub-paragraph 5(a), which addresses the strengthening of the Conference of State Parties as a political forum for addressing topics in the area of hemispheric cooperation against corruption; and sub-paragraph 5(b), which invites the Conference of the State Parties to consider concrete measures, in accordance with Articles V, VI.1.b and VIII of IACAC; and sub-paragraph 5(c), on new forms of cooperation; and sub-paragraphs 5(d) and 5(f).

Likewise, Transparency International supports paragraphs 2 and 3 of Draft Resolution AG/doc. 4368/05 (“The Role of the Legislative Branch in Combating Corruption and Impunity in the Hemisphere”), which address the participation of the legislative branch in the implementation of MESICIC’s recommendations, as well as the exchange of information on MESICIC’s activities and proposals.

Transparency International recognises the advances made by MESICIC and the efforts of the Expert Committee. TI believes it is indispensable, however, that the following recommendations be integrated into sub-paragraph 5(d) the Draft Resolution:

1. Currently 28 countries participate in MESICIC; we urge that the remaining five State Parties to IACAC join MESICIC.
2. State Parties to MESICIC should publish annual reports on their implementation of the Committee’s recommendations.
3. We urge the adoption of a general rule of publication of all MESICIC documents. It should be a rule of procedure of the Committee that responses to its questionnaires and country reports be made public on the OAS website by the MESICIC secretariat. To date, only 23 State Parties have authorised publication of their responses and 15 countries have authorised publication of the final report approved by the Committee of Experts. Without this information, it is difficult for civil society to know where action is needed and to prepare its analysis.
4. Civil society’s role in the review mechanism should be formalised. Currently, civil society organisations from 15 countries examined to date have produced reports on the implementation of IACAC by their governments. These civil society organisations have been invited to present only informally before the MESICIC Committee of Experts. The Committee of Experts should recognise in its procedural rules the right of civil society to participate permanently in the review process and to submit independent reports. Transparency International believes that the value of the civil society perspective has been amply demonstrated and should be institutionalised.
5. The Committee of Experts should consider the participation of civil society as permanent observers of the Committee’s work, in accordance with Article IX of the Report of Buenos Aires and with Article III of IACAC.

6. That State Parties to the Follow-up Mechanism for the implementation of the Inter-American Convention against Corruption (MESICIC), incorporate in their second round in 2006 the following articles of the Convention:

- a) Article VIII on transnational bribery and Article IX on illicit enrichment;
- b) Article XIII on extradition and Article XVII on nature of the act;
- c) Article XV on measures regarding property and Article XVI bank secrecy.

7. To accelerate the MESICIC schedule, we recommend increasing the number of sessions of the Expert Committee from two to three per year, while maintaining six as the number of countries to be reviewed at each session. This would reduce the time needed to complete the round to two years.

8. While Transparency International agrees with the content of paragraph 10 of Draft Resolution 4386/05 ("Follow-up on the Inter-American Convention against Corruption and its Program for Cooperation"), which instructs the Permanent Council to prepare a report on the implementation of the resolution for the General Assembly's thirty-sixth regular session, TI believes that State Parties should commit to reporting to the 2005 Summit of the Americas on the current state of IACAC's implementation.

III. Recommendations on Mutual Legal Assistance in Criminal Matters:

To implement paragraph 4 of Draft Resolution 4386/05 ("Follow-up on the Inter-American Convention Against Corruption and its Program for Cooperation") which "urge[s] the State Parties to IACAC to improve, on the basis of the Convention and applicable laws and treaties, regional and bilateral mechanisms for mutual legal assistance in criminal matters, and to apply them, in order to respond to requests made in accordance with the procedures established in these mechanisms in relation to the acts of corruption described in the Convention, with a view to combating impunity," Transparency International believes that it is essential that the State Parties implement the Recommendations (REXCOR/doc.2/05 rev 1) of the Meeting of the Experts on Cooperation with respect to the Denial of Safe Haven to Corrupt Officials and Those Who Corrupt Them, Their Extradition, and the Denial of Entry and Recovery of the Proceeds of Corruption and Their Return to Their Legitimate Owners," consistent with sub-paragraph 6(b) of the Draft Resolution.

For this mutual-assistance mechanism to operate, it is also necessary that:

1. Those countries that have not yet done so comply during 2005 with Article XVIII of the IACAC on Central Authorities and designate Central Authorities, and that these authorities implement registry and follow-up systems in 2005.
2. National information systems be set up and integrated into a more fluid regional information network among the organs of criminal investigation and prosecution.
3. States expedite their responses to requests for assistance.
4. Countries implement concrete measures to prevent money laundering and raise the level of internal and external control over the financial activities of their national

institutions. Specifically, the Committee should, in the short term, set up measures to comply with the recommendations of the Financial Action Task Force, especially recommendations 3, 7, 26 and recommendations 30 to 40 from this list.

5. States commit to specific measures to strengthen the autonomy, authority and coordination among agencies that operate in this area, for example national anti-corruption offices, procurators-general and internal auditors.

IV. Recommendations to the Meeting of Justice Ministers (REMJA):

1. The OAS should urge the creation of a Plan of Action to strengthen and modernise the operating institutions of the justice systems of states in the hemisphere, with the goal of:

a) Instituting procedures to promote independence and integrity in the administration of justice, including merit-based criteria for selection of judges, public review of candidates and oversight mechanisms.

b) Instituting procedures for the continued training of investigators, prosecutors, judges and operators of judicial systems in specialised areas, and for their cooperation.

c) Establish evaluation processes for the actions adopted at the national level for the modernisation of justice, incorporating indicators that measure the impact of reforms to the justice system and their relation to the fight against corruption.

2. The OAS and State Parties should institutionalise the input and participation of civil society in the MESICIC review process, the monitoring and improvement of justice systems and in related forums.

V. Recommendations on Transparency and Free Access to Public Information:

State Parties should commit to move expeditiously to implement legal requirements to ensure the publication in writing and in electronic format all laws, regulations, judicial decisions, administrative guidelines and decisions, licensing requirements and other information regarding procurement, investment, services, customs and other relevant areas. A transparent, independent and timely appeals procedure should be available for erroneous or inequitable decisions. Proposed laws and regulations should be published and an opportunity for public comment provided prior to implementation.

VI. Recommendations on International Technical and Financial Assistance:

Transparency International supports the content of paragraphs 8 and 9 of Draft Resolution 4386/05 ("Follow-up on the Inter-American Convention against Corruption and its Program for Cooperation") on the Inter-American Program for Cooperation in the Fight against Corruption and the Inter-American Network for Cooperation against Corruption. However, Transparency International believes that State Parties must also urge multilateral development banks to take the following steps:

1. The World Bank and the Inter-American Development Bank should include as part of their country-assistance strategies support for implementation of the commitments adopted at OAS Summits and under the IACAC and MESICIC, and for the participation of civil society in this process.

2. State Parties should instruct the World Bank and the Inter-American Development Bank to adopt regulations, procedures and policies for their procurement activities that meet the highest ethical standards. These should ensure transparency and public access to information about projects under study as well as projects already approved by the banks.

3. The OAS should promote the generation of permanent funds within the multilateral development banks for the promotion of civil society participation, especially in the areas of monitoring and implementation of IACAC.

These recommendations reflect Transparency International's goals for greater accountability and transparency. TI urges the State Parties to reaffirm their commitment to increasing transparency by adopting these recommendations in the XXXV General Assembly.

For further information, please contact:

Ms Silke Pfeiffer

Regional Director, the Americas

spfeiffer@transparency.org or

tel: +49 30 34382033

Miguel Angel Peñailillo

Regional Coordinator

Anti-corruption Conventions Programme

mpenailillo@tie.cl