



**TRANSPARENCY INTERNATIONAL PROPOSALS
FOR THE METHODOLOGY
OF THE SECOND ROUND OF MESISIC
March 20 2006**

I. INTRODUCTION

The Follow-up Mechanism for the Inter-American Convention against Corruption will begin its Second Round of Review in March 2006 following the Committee of Experts' approval of its methodological aspects.

Transparency International national chapters across the hemisphere have ongoing programs aimed at promoting implementation of the OAS Convention in their countries. They have participated in the deliberations of the Follow-Up Mechanism as an important component of these programs because the Committee's recommendations provide a sound basis for stimulating effective reform. Therefore, TI welcomes the opportunity to contribute to the deliberations and decisions of the Committee of Experts as it defines the methodology, questionnaires and reports for the Second Round

In accordance with the Rules of Procedure for the Committee of Experts, the Committee is to adopt a methodology for reviewing implementation of the Convention's provisions in a manner designed to ensure that *sufficient* and *reliable* information is obtained. Transparency International submits the following proposals in an effort to ensure this objective, sufficient and reliable information, is obtained.

The proposals are divided into three categories: the methodology, the questionnaire, and the report.

II. SPECIFIC PROPOSALS FOR THE *METHODOLOGY*

1. Enhance the use of statistical information in the review. With respect to the specific criterion for the review of data, which seeks to work from information based on objective data for each country, the questionnaires and reports should *be based on statistical information that is public or, in its absence, accessible so that it may be verified*. Also, the supporting data should be attached to the questionnaire.

2. The basis for review of systems for procurement and government hiring, should be more precise given the complexity of the topics.

The OAS Convention is not explicit regarding the desirable elements of government procurement and government hiring systems; it was negotiated over ten years ago and was the first of its kind in the world.

The United Nations Convention Against Corruption (UNCAC), clearly indicates the most important features of these systems and since it has been signed by 24 countries in the Americas should form the basis for the review.

In using the UNCAC as a point of reference, *Article 7 sections 1 and 4*, relating to government procurement, and *Article 9*, relating to government hiring processes, should be taken into account.

There are additional sources, particularly in the area of government procurement, which could be taken into account. Examples include the GATT Government Procurement Agreement and recent progress in the WTO in the area of procurement transparency, as well as United Nations Commission for International Trade Law (UNCITRAL) and its model law. Transparency International's Minimum Standards for Public Contracting could also be taken into account.

3. Review of whistleblower protection systems should consider both legal statutes and actual practice.

The development of regulatory systems to protect whistleblowers who report acts of corruption is inadequate and, even when adequate, poorly enforced in practice. Therefore, the review process should assess not only laws and regulations but also how they are applied in practice, and the effectiveness of related mechanisms and procedures.

Several First Round country reports recommendations regarding Article III, section 1, on the duty of government employees to report acts of corruption, include measures to protect whistleblowers (Paraguay, Colombia, Uruguay, Panama and Chile, to name an only few).

Experience with these recommendations should be considered in discerning the desired features for an effective whistleblower protection system, and incorporated into the questionnaire to enhance the review of such systems.

4. The review of Article VI should consider both the implementation of laws as well as their enforcement.

The review of the criminal prosecution process should assess how Article VI is stipulated in the country's criminal legislation. This is necessary but not sufficient. The second step must be to determine how prosecution is carried out. This two-step review is best practice in the OECD and Council of Europe GRECO reviews, including on-site reviews of enforcement. Therefore the methodology and questionnaires should request:

- a) A brief description of criminal procedure system of the country and the steps outlined for a criminal trial for such crimes.
- b) The most accurate statistical data possible on results of the prosecutions system on those kinds of crimes.
- c) Any existing difficulties that undermine the full implementation of the Article VI.
- d) On site visits by members of the Committee of Experts to confer with law enforcement and other relevant authorities and civil society.

Paragraph d) refers to formal document provision in article 32 regarding visits for follow up in the rules of procedure in the first round. TI requests an explanation as to why it was deleted. We strongly suggest re-insertion given that it is best practice and will ensure that experts have reliable and in-depth information.

5. The Committee's Review of Its Country Report Recommendations should be strengthened. The effectiveness of the Follow-Up Mechanism relies on governments carrying out the Committee's recommendations fully and promptly. Therefore, with reference to the "considerations regarding the scope of follow-up on the recommendations issued in the country report in the first round" the questionnaire should require information on:

- a) The steps taken to implement the recommendations adopted by the Committee.
- b) The difficulties encountered in applying the recommendations, in accordance with Article 29 of the Rules of Procedures.
- c) The internal agencies tasked with carrying out such recommendations.

6. The time limit for the civil society organization's participation shall facilitate both the Committee and the organization's work. TI suggests adopting the Final Paragraph in the following form:

"For the purposes of this section, civil society organizations may submit documents, together with the appropriate electronic copy, at the start of the second round, *within the 30 days after the time limit* established in the timetable for States Parties to present their responses to the questionnaire. With respect to each of all the groups of States Parties to be reviewed, civil society organizations may submit documents *within 30 days after the time limit* established in the timetable for States Parties to present their updated responses to the questionnaire regardless whether they have submitted documents at the start or the second round."

III. TI PROPOSALS FOR THE *QUESTIONNAIRE* OF THE SECOND ROUND OF MESISIC

Given the importance of the Questionnaire to ensuring that the Committee of Experts receives sufficient and reliable information, we recommend the following proposals for the questionnaire.

1. The structure of the questionnaire could be organized in a manner that is easier to follow, without affecting its content by ordering the questions as they relate to:
 - a. Laws and applicable regulations;
 - b. Management of the system (policies, procedures, and practices);
 - c. Results achieved.

This minor change in format will facilitate the completion of the questionnaire with relevant information.

2. In Chapter III relating to acts of corruption, we recommend the questionnaire have questions that will enable each country to:
 - a. Describe its legal system and the legal trial to prosecute these kinds of crimes.
 - b. To give statistical data on:
 - i. Reports of crimes reviewed;
 - ii. Legal proceedings begun;
 - iii. Court rulings handed down: What were the average sentences in convictions? What levels of officials were prosecuted? Has both active and passive corruption been prosecuted?
 - c. Describe any factors that make it difficult to try such crimes in the country. Specifically, any existing difficulties that undermine its full implementation, immunity or impunity.

IV. TI PROPOSALS FOR THE *REPORT* OF THE SECOND ROUND OF MESISIC

Given the importance of the Report to describe the analysis process and show the Committee of Expert's conclusions and recommendations, we recommend the following proposal for the Report:

The Report shall describe the recommendations in a way that facilitates their implementation and follow up in the respective country. The report shall specify among others the specifics laws, regulations, procedures, systems or practices that should be changed, and the organisms that should be involved in the implementation. Governments shall submit within one year to the Mechanism Secretariat a public report on the level of implementation of the recommendations.