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Technical Assistance Module (TAM)

Citizen Participation in the Follow-up of the Inter-American Convention Against Corruption

by
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2004

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Foreword

The Americas' Accountability/Anti-Corruption Project (AAA) is an initiative funded by the United States Agency for International Development (USAID). Now in its third phase, the Project, which began in 1993, is administered by Casals and Associates, Inc., to support USAID Missions in the Latin America and Caribbean region (LAC) in design and implementation of anti-corruption programs.

The AAA Project identifies, documents and disseminates best practices through a series of Technical Assistance Modules (TAM) that focus on specific reforms aimed at increasing transparency in LAC countries. These reforms are presented as promising practices to generate interest and discussion among practitioners and promote replication of the most successful experiences in the region.

TAMs are disseminated through a variety of methods and shared with multiple stakeholders, including USAID Missions, international donor organizations, business and professional associations, civil society organizations (CSOs), government officials interested in pursuing reforms and practitioners seeking opportunities for replication. TAMs also can be used to develop and support bilateral mission and regional activities.

TAM development includes soliciting input from stakeholders engaged in good governance and anti-corruption/accountability activities. Conferences, workshops, forums, external assessments and evaluations, research initiatives and consultations with experts also contribute. Moreover, TAMs identify national and local experiences that provide valuable practical information relative to improving governance and increasing transparency and accountability.

TAMs are not meant to be prescriptive. Their general objectives are to:

- Provide examples of anti-corruption activities;
- Generate discussion among practitioners in the field and promote replication of successful models;
- Illustrate best practices, presenting the tools, methodologies and frameworks being used to fight corruption;
- Describe programming approaches and strategies;
- Provide an overview of activities of others engaged in reducing corruption: donors, CSOs and the private sector;
- Present reform-program case studies, and
- Direct readers to additional resources.

Acknowledgement

The Americas' Accountability-Anti-Corruption Project expresses its appreciation to Roberto de Michele for his research, design and authorship of this Technical Assistance Module, as well as his ongoing commitment to reducing corruption in emerging democracies.

In addition to his work with Casals & Associates, Inc., Mr. de Michele provides technical expertise and counsel to the United States Agency for International Development, The World Bank and Inter-American Development Bank on implementation of programs designed to increase transparency in public administration.

He has served as Director of Policy Planning in the Anticorruption Office of the Argentina Ministry of Justice and Human Rights, during which time he was President of the First Conference of States Parties to the Inter-American Convention Against Corruption and was the expert designated by Argentina to the Committee of Experts for the Mechanism for Follow-up on Implementation of that Convention.

He also served as President of the United Nations Informal Preparatory Meeting of the Special Committee to Negotiate a Convention Against Corruption. He served as manager of the Private Initiative for Control of Corruption, a program of the Argentine Citizen Power Foundation and practiced law in Argentina.

Mr. de Michele received a Law degree from the University of Buenos Aires and an LL.M. from Yale Law School.

Executive Summary

This Technical Assistance Module (TAM) explains how non-government organizations (NGOs) can participate in the Organization of American States (OAS) Mechanism for Follow-up on Implementation of the Inter-American Convention against Corruption (Follow-up Mechanism).

The Inter-American Convention against Corruption (Convention) was signed in 1996 by an initial group of countries of the Americas and, gradually, almost all OAS member countries have become signatories.
The Convention incorporates a broad range of provisions that address criminal issues (including national and transnational bribery and illicit enrichment) and recommends preventive measures (policies, regulations and mechanisms) to reduce and prevent corruption and promote government transparency. The Convention also contains provisions related to international assistance and cooperation, intended to foster mutual support among States Parties for the prevention and prosecution of corruption.

A few years after the Convention was signed, the States Parties began to study the feasibility of a mechanism that would allow them to monitor how signatory countries complied with Convention mandates.

The result of this initiative is the Follow-up Mechanism, a process by which States Parties analyze how each country is implementing the Convention, with the goal of making recommendations and facilitating cooperation in the fight against corruption.

The Committee of Experts, composed of technicians designated by States Parties to the Convention, is the body in charge of conducting an analysis of each country, based on country answers to a standardized questionnaire on the specific Convention provisions being evaluated. The analysis is conducted based on a set of objective criteria.

The Follow-up Mechanism allows civil society organizations (CSO) of each country to submit independent reports on the degree of compliance with Convention provisions in their respective countries.

These reports achieve various goals, among them to facilitate analysis by the Committee of Experts by offering additional information on the status of Convention implementation.

Producing the reports is one way NGOs can develop their ability to analyze current policies, evaluate whether the government meets its commitments, and produce recommendations regarding which public policies foster transparency and prevent and control corruption.

Citizen participation, especially by NGOs, is necessary to maintain and foster application of effective measures to prevent and punish corruption. The lack of adequate strategies to integrate civil society in this process conspires against the effectiveness of the Convention and local efforts to reduce corruption.

This TAM presents a strategy to produce an independent report on implementation of the Convention. The process can be adapted to any country to achieve the desired results.

This TAM also incorporates the experiences of NGOs from Argentina, Colombia and the Dominican Republic, which already have seen tangible results from these types of initiatives. The examples illustrate practical ways to implement the activities at every stage.

The steps:

1. Identifying the organizations(s) that will produce the report
2. Training the organization(s)
3. Developing a work plan
4. Gathering the information
5. Analyzing the information
6. Writing the report
7. Disseminating the report

Each step consists of a goal and a description of the activities to be carried out. The steps have been designed in sequence, in order to accomplish production and dissemination of an independent report. Recommendations also are included on how these activities and the report can have an impact beyond the Follow-up Mechanism.

The Conclusion presents suggestions regarding replicating some of the proposed activities and current opportunities to promote transparency and control corruption.

I. Technical Assistance Module (Tam)

A. Objective

This Technical Assistance Module (TAM) explains how non-government organizations (NGOs) can participate in the Mechanism for Follow-up on Implementation of the Inter-American Convention Against Corruption (the Follow-up Mechanism).

NGO participation consists of preparing an independent report on the extent to which Convention provisions have been implemented.

These reports serve, at minimum, the following purposes:

1. They facilitate analysis by the Committee of Experts, charged with assessing implementation of the Inter-American Convention against Corruption (Convention), providing additional sources of information and evaluation on the implementation status of the Convention in a given country.

2. They bring an independent point of view to the questionnaire that every country sends to the Committee of Experts. The availability of alternative information to that offered by governments provides an additional degree of objectivity in the review of a given State Party by the Committee of Experts.

3. Producing the reports is one way to comply with the mandate of the Convention and the Follow-up Mechanism to integrate civil society in the fight against corruption. This task gives NGOs a central role in the effort toward greater transparency and integrity: developing their capacity to analyze current policies, evaluating whether the government meets its commitments, and producing recommendations for public policies that promote greater transparency and the prevention and control of corruption.

   It is important to note that, even without the Convention and the Follow-up Mechanism, these are activities NGOs can undertake as part of an ongoing agenda of follow-up and oversight of the public sector.

4. NGOs' independent reports have significant value beyond their use for the Follow-up Mechanism. They are a resource for public dialogue in each country. Dissemination of and publicity on the reports at the local level advance discussion among citizens, public authorities, experts and all who are responsible for and interested in promoting the fight against corruption.

By way of example, this TAM includes recent experiences of NGOs that have produced independent reports or are in the process of doing so. These experiences serve as a reference and illustrate possible courses of action.

B. Structure

This TAM is organized as follows:

The first section presents a brief overview of the Convention contents and describes how the Follow-up Mechanism works.

The second section explains why NGO participation in this process is important. It describes the legal framework necessary to develop such participation and outlines a process to produce an independent report on the application of Convention provisions. The experiences of several Latin American NGOs with this process also are presented.

The Conclusion section contains suggestions, based on the process proposed in this TAM, for CSOs to consider in preparing their independent reports.

The Appendices contain the legal instruments referenced in the TAM.

II. The Inter-American Convention Against Corruption

A. Introduction

One of the first steps in the adoption of the Inter-American Convention against Corruption was a recommendation of the Inter-American Juridical Committee that an international instrument be developed to combat corruption.

The Summit of Heads of State and Governments, held during the 1994 Summit of the Americas, issued a statement containing a commitment to encourage the adoption of a Plan of Action to confront corruption. This Plan of Action addresses a significant number of issues that were later included in the Inter-American Convention Against Corruption, including oversight bodies, access to information, conflicts of interest, international legal cooperation, transnational bribery and illicit enrichment.

Thanks to an initial support by Venezuela, the Organization of American States (OAS) in 1995 created the Working Group on Probity and Public Ethics, responsible for producing a base document from which the details of a potential convention could be gleaned. Successive meetings of experts designated by various member countries of the OAS produced the Inter-American Convention against Corruption adopted in Caracas, Venezuela,[1] in March 1996, by 29 OAS member countries. To date, 28 countries have ratified the Convention.

The Convention is the first international treaty to deal with the issue of corruption. In 1997, the Organization for Economic Cooperation and Development (OECD) approved the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions[2]. Almost simultaneously, the United Nations (UN) initiated a process to develop an international treaty for the same purpose. The UN recently adopted the United Nations Convention against Corruption.

In spite of this progress, the Inter-American Convention against Corruption might have had the same destiny as some laws and treaties that are simply pronouncements of good intentions without practical effect. Concern that the Convention might lose effectiveness was felt in civil society and in government.

In December 1999, by initiative of Transparency International, the Washington College of Law at American University and the Inter-American Bar Association, the "Conference of Experts: A Hemispheric Look at the Fight Against Corruption" was held in Washington, D.C. It brought to-

[1]See Carlos Manfroni, *La Convención Interamericana contra la Corrupción, Anotada y Comentada* [The Inter-American Convention Against Corruption, annotated with commentary]. Updated by Richard S. Werksman. Lexington Books, Lanham, MD, 2003.
[2]See www.oecd.org, in the section "Fighting Bribery and Corruption."

gether scholars, public officials, professionals and members of international organizations and NGOs. Participants agreed that the Convention had little chance of being implemented unless it had an effective follow-up mechanism. The gathering discussed various existing alternatives, such as the OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and the Convention by the Group of States Against Corruption.
The president of the Working Group on Probity and Public Ethics invited Transparency International to present its conclusions and recommendations to the Working Group, which used this input in developing the Follow-up Mechanism, which is now being applied.[3]

In June 2000, a Resolution of the OAS General Assembly[4] mandated that the Working Group evaluate the feasibility of establishing a mechanism for following up implementation of the Convention among the States party to the Convention.

Early in 2001, a Meeting of Experts in Preparation for the First Conference of States Parties to the Convention was held at OAS headquarters. At this meeting, States representatives discussed the wording for the Follow-up Mechanism recommended by the Permanent Council.

The "First Conference of States Parties to the Inter-American Convention against Corruption for the Establishment of a Follow-up Mechanism of Its Implementation" occurred a few months later.[5] The meeting took place in Buenos Aires, with the goal of seeking a consensus among States Parties to the Convention to define the structure and elements of the Follow-up Mechanism[6].

After three days of negotiations and deliberations, delegates of the 17 countries agreed on the content for a document that would define the Follow-up Mechanism. The document is entitled the Report of Buenos Aires on the Mechanism for Follow-up on Implementation of the Inter-American Convention against Corruption (Report of Buenos Aires).

On June 4, 2001, in San José, Costa Rica, on the occasion of the XXXI ordinary session of the OAS General Assembly, 20 of the 22 States Parties to the Convention officially adopted the Report of Buenos Aires.

Besides establishing the structure and objectives of the Follow-up Mechanism, this document provides for participation of civil society in the follow-up process.

B. The Inter-American Convention against Corruption. Convention Provisions

The Convention is an international treaty with the following goals:[7]

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[3]The Experts Roundtable: A Hemispheric Approach to Combating Corruption, American University International Law Review, Vol. 15, No. 4.
[4]Resolution AG/RES. 1723 (XXX-O/00).
[5]Those interested in obtaining complete information and documents related to this Conference, can find them at www.anticorrupcion.jus.gov.ar. Click on "Links of Interest" and "C.I.C.C. Conference."
[6]Delegations of the following States Parties attended: Argentina, Bahamas, Bolivia, Canada, Chile, Costa Rica, United States of America, Ecuador, El Salvador, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Uruguay and Venezuela. Also in attendance were the following Non-Party States: Brazil, Guatemala and Haiti, as well as representatives of the Inter-American Development Bank and the OECD.

[7]According to Article II.

1. To promote and strengthen the development, by all States Parties, of the necessary mechanisms to prevent, detect, penalize and eradicate corruption; and

2. To promote, facilitate and regulate cooperation among States Parties to ensure the effectiveness of measures and actions to prevent, detect, penalize and eradicate acts of corruption in the performance of public functions, or acts specifically related to such performance.

The Convention establishes that the fight against corruption is a national obligation for the countries that have ratified it. It also requires cooperation and assistance among the signatory countries.

This latter measure reflects a relatively new way of thinking of approaching the issue of corruption. In the case of grand scale corruption, it is almost a rule that the effects and "benefits" of such acts go beyond the borders of the country where, for example, the bribe was paid. Thus, the lack of measures to facilitate extradition, establish the forfeiture of assets and criminalize transnational bribery turns the fight against corruption into merely a local effort with limited scope. The Convention responds to theories that have evolved that define the fight against corruption as a matter of both local responsibility and international cooperation.

The provisions of the Convention can be grouped in different ways. This TAM proposes three categories: criminal provisions, preventive measures and provisions for international cooperation.

As regards to criminal provisions, the Convention is broadly focused and presents a variety of standards—some original, such as the concept of transnational bribery—and others that, to some extent, are already incorporated into local legislation in several countries of the OAS. Such is the case with crimes listed in Article VI–bribery among them—and illicit enrichment. Regarding these provisions, the States Parties commit to incorporating them into their legislation.

A specific case is that of the so-called Progressive Development measures, contained in Article X of the Convention, which are to be considered by the States Parties to be eventually adopted as national criminal legislation.

On the other hand, within the category of preventive measures, the Convention incorporates a set of regulations regarding transparency policies, administrative regulations, definitions of public institutions and the role of civil society in the fight against corruption. These provisions are designed to create a preventive framework regarding acts of corruption.

Some of these measures focus on the structural aspects of corruption, such as the paragraphs in Article III that set out criteria for procurement, tax collection policies and employment in the public sector, to mention just three examples. This article also includes an explicit definition of the role of civil society in the fight against corruption. The article points out the importance of governments promoting "mechanisms to stimulate the participation of civil society and non-government organizations in the efforts to prevent corruption." The incorporation of this type of measure is another innovative feature of the Convention. Indeed, the Convention adopts a comprehensive position on corruption by establishing a number of measures, ranging from the preventive to the prosecutorial.

Finally, a third category includes a series of provisions that might be described as measures of International Cooperation. This group of articles regulates technical cooperation and legal assistance among the States Parties in order to facilitate the application of other Convention provisions. It is important to note that, in the text of the Convention, international cooperation is not limited to criminal matters. Various dispositions foster and regulate technical assistance to promote the dissemination of practices that have proved effective for promotion of transparency and prevention of corruption.

Is the Convention binding for States Parties?

Some articles of the Convention are clearly binding for the States Parties. Articles VI, VII and XIV indicate that countries which have adopted the Convention must take specific legislative and institutional measures.

Other Convention provisions are worded in less categorical terms. Article III, for example, lists Preventive Measures, and begins: "States Parties agree to consider the applicability of measures, within their own institutional systems to create, maintain and strengthen . . ." This language could be interpreted as a recommendation.

In practice, however, especially since the adoption of the Follow-up Mechanism, the distinction between the types of provisions is less categorical. In part, this is because the process of analysis established by the Follow-up Mechanism puts both categories on the same footing, as if all cases constituted an obligation.

C. The Follow-up Mechanism

The Follow-up Mechanism was adopted after a series of resolutions by the General Assembly and recommendations by the Group on Probity and Public Ethics of the OAS.[8]

The Follow-up Mechanism is a joint exercise among the States Parties of the Convention, so they can reciprocally analyze how an individual Sate Party has implemented the Convention provisions. The analysis, carried out by a Committee of Experts selected by each country, ends with the publication of a report on the status of implementation and application of the Convention in each country.

a) According to the Methodology adopted by the Committee of Experts, the recommendations in the reports for each country must cover the following:
b) Reference to each of the report's thematic areas, according to the Convention provisions being analyzed.
c) Progress: areas requiring improvement in implementation of the Convention, should there be any, and recommendations for the State Party to initiate necessary actions.
d) Reference to areas in which the State Party can request or receive cooperation or technical support, as well as resources or programs in the field that can be of assistance.
e) Enough detail and specificity to allow for follow-up in agreement with provisions of the Report of Buenos Aires, the Rules of the Committee and this methodology.

Which Convention provisions does the Follow-up Mechanism analyze?

[8]Complete documents and background can be found at www.OAS.org. Under "Items of Interest," click on "Corruption."

Given that the Convention is a lengthy and complex document, it would be difficult to analyze every aspect of its application in a single round, or session. A large group of analysts and experts would be needed to adequately review how and in what manner each country meets its commitments.

This is why the Committee of Experts, following the recommendation of the Conference of States Parties, selected the following Convention provisions for analysis in the first round:

a) Article III, paragraphs 1, 2, 4, 9 and 11;
b) Article XIV, and
c) Article XVIII.[9]

How does the Follow-up Mechanism work?

The parameters of the Follow-up Mechanism were defined by the States Parties in the Report of Buenos Aires, which set out its principles, structure and general rules.

The first three articles are clear regarding the guiding goals and principles of the Follow-up Mechanism. Subparagraph (b) provides a specific definition of what is expected from this procedure.

1. Purposes
   Purposes of the Follow-up Mechanism will be to:
   a) Promote implementation of the Convention and contribute to attaining the purposes set forth in Article II thereof;
   b) Follow up on the commitments made by States Parties to the Convention and to study how they are being implemented, and
   c) Facilitate technical cooperation activities; the exchange of information, experience, and best practices; and harmonization of States Parties legislation.

2. Basic principles
   Development of the Follow-up Mechanism shall be guided by the purposes and principles established in the Charter of the OAS. Therefore, the powers accorded to it and the procedures it follows shall take account of the principles of sovereignty, non-intervention and the juridical equality of the states, as well as the need to respect the Constitution and the fundamental principles of the legal system of each State Party.

3. Characteristics
   The Follow-up Mechanism shall be intergovernmental in nature and shall have the following characteristics; it shall:
   a) Be impartial and objective in its operations and in the conclusions it reaches.
   b) Ensure equitable application and equal treatment among States Parties.
   c) Not entail the adoption of sanctions.
   d) Establish an appropriate balance between the confidentiality and the transparency of its activities.
   e) Be conducted on the basis of consensus and cooperation among States Parties.

[9]See the content of these provisions in Appendix I: The Inter-American Convention Against Corruption.

These definitions of the Report of Buenos Aires help us understand its basic scope and elements. It also helps understanding the role of the organizations of civil society by producing an independent report on the level of implementation of the Inter-American Convention against Corruption.

What are the consequences for countries that don't comply with the Convention?

It is often debated on what are the practical consequences for a country that is unable to meet a minimum level of compliance, after the review carried-out by the Follow-Up Mechanism. Basically, the Mechanism is intended as a process of cooperation. This means that countries may not take punitive measures because of lack of compliance with Convention mandates. There is at least one meaningful consequence, however, at the international and local levels: the political effect of the dissemination of the Country Reports produced by the Committee of Experts.

In the case of Argentina, for example, dissemination of the report by the Committee of Experts and the attention it received from mainstream press, pointing to the need to adopt additional measures to meet Convention requirements, aided NGOs in strengthening their demands that the government apply further measures to prevent and control corruption.

III. Participation of civil society in the Follow-up Mechanism

Public demand for Latin American governments to address corruption increases as these nations follow the path toward democratization. Obviously, some of these democracies are weak. In some cases, they lack a tradition of respect for law and institutions, having emerged from an opposite tradition: authoritarian governments, suppression of freedoms and human rights, and political systems with no accountability to citizens.[10]

A lack of transparent mechanisms for selecting and promoting government employees, ineffective control agencies, abuse of public resources, application of public policies that are inefficient or are guided by party interests, plus an apathetic society in the face of these problems, are often symptomatic of the silent legacy left by authoritarian systems.

Corruption isn't new in Latin America, nor has it been brought about by democratization. Where there were authoritarian governments and obstacles to participation and the exercise of political rights, there was also lack of accountability, the basis of corrupt systems.

The risk of interest groups capturing the state, the difficulty of verifying the financing of party activities and the existence of scarcely legitimate procedures in public-sector decision making (at the judicial, administrative and legislative levels) add another layer of difficulty to the situation.
Although the current situation may appear discouraging, we're probably witnessing the first steps of a positive change. Demands for increased transparency, reflected in the media throughout the hemisphere are, in a way, the expression of citizens who are aware of the problem and can voice their concern and demand change.

The existence of a democratic system, in spite of the difficulties in each country, is a necessary condition to begin debating on the adequate policies to control corruption.

[10]Roberto de Michele, *La Sociedad Civil en la Lucha Contra la Corrupción* [Civil Society in the Fight Against Corruption], *Fundación Poder Ciudadano,* mimeograph, 1997.

In a society that enjoys reasonable institutional development, if a case of corruption arises involving the government and the private sector (bribing a tax collector to avoid paying taxes, for example), there's a general expectation that the following will happen:

- Those who paid the bribe will be investigated and, if found guilty, will face corresponding sanctions.
- Law-abiding businessmen will exert pressure on the government to keep unfair competition out of the economy: tax evasion affects investment and economic growth.
- Political parties will be interested in offering alternatives so these cases won't occur. They'll prove more capable than government officials in preventing such cases.
- Citizens will consistently demand that government officials comply with the law and that politicians keep their promises (and will penalize them by denying them their vote, for example). In some cases they'll exercise their power as consumers to "punish" businessmen.

These conditions don't exist in most countries of the world.

There are quantitative and qualitative differences in the levels of corruption. If violations of the law are the exception in a society, and the enforcers of the law are not among the law-breakers, then criminal prosecution can be one effective tool against the problem.

On the other hand, as appears to be the case in many countries where non-compliance with the law is generalized and systemic, punishment isn't an adequate response. Even if those who apply sanctions are honest public officials, as in the case of the *Mani Pulite* movement in Italy, sanctions — by definition — are not capable of modifying the system that made the act of corruption possible.

Gherardo Colombo, one of the most active judges in the *Mani Pulite* processes, pointed out that, in spite of the large number of people indicted and found guilty in that country, judges couldn't change the system of financing political parties, government procurement or appointment of public officials. By definition, it requires adequate legislation, institutions and public policies, not simply criminal punishment.[11]

Is this an invitation to impunity? Indeed, sanctions are essential to make a distinction between acceptable and non-acceptable behaviors. It's impossible to ignore sanctions in the fight against corruption.

But in some sense, corruption is not a problem but a symptom. As in Medicine, to target symptoms without understanding the root causes of a problem will create only chronic disease. Our efforts and best intentions would then be simply fodder for social cynicism and disbelief.

Criminal prosecution in a context of extended disregard for the law isn't the best way to confront the problem. The punishment then addresses only the symptom: the case, the person who com-

[11]Gherardo Colombo, *Sobre las investigaciones de la magistratura italiana en los casos de corrupción contra la administración pública* [On the investigations by Italian judges of cases of corruption in public administration], mimeograph, Buenos Aires, 1997.

mits the corrupt act. The true challenge is to confront the source of the problem, its structural aspect.

In order to do that, adequate analysis of current laws and institutions and how they foster accountability or facilitate corruption is necessary. The focus must not be solely on the case, but must include the system, prevention and transparency.

Besides, while there are common patterns to different countries, each country must develop its own approach to the problem. This step is basic, as it allows the citizens of each country to understand how the problem affects them, how they must act and how they must adapt the experiences of other countries. If the strategy is successful, it reinforces prevention and tends to marginalize the problem, where punishment is most effective.

New democracies have brought to the debate the possibility of exposing corruption, exploring options for change and attempting to implement those options. This is the challenge of civil society in the fight against corruption: to create awareness, to debate alternative solutions, to demand that political and social leaders implement tangible changes and to verify such changes.

Along with encouraging information and debate on the subject, NGOs must establish mechanisms that facilitate the analysis of the application of current laws and institutions and their connection to the prevention and investigation of corruption. One of the primary assurances that reforms will take place is citizen participation.

Citizen participation in public matters is related to levels of transparency and accountability. The deeper the citizen commitment to public issues, either as individuals or as a whole, the less likely the probability of abuse of power and arbitrariness.

Naturally, participation must find adequate channels to ensure that the effort will be effective in the promotion of a higher level of transparency and quality in public administration.

Non-governmental organizations are one of the means by which citizens channel their participation. They're responsible for encouraging not only public debate but also critical analysis of institutions and public policies to address the problem.

Various countries are beginning to show competition among candidates and party leaders to satisfy the demand for transparency. Those who propose inadequate solutions open themselves to media criticism and lose legitimacy with voters.

A. The Legal Framework for CSOs participation in the Follow-up Mechanism

Various instruments and documents related to the Follow-up Mechanism define the rights and the method of participation, in particular the Report of Buenos Aires, the Rules of Procedure of the Committee of Experts, and the Methodology for the Review of Implementation of Provisions of the Inter-American Convention against Corruption, which were selected in the framework of the First Round.

The Report of Buenos Aires states:

> "In order to obtain better input for its review, the Committee shall include in the provisions governing its operation an appropriate role for civil society organizations, taking into account the 'Guidelines for the Participation of Civil Society

> Organizations in OAS Activities' [CP/RES. 759 (1217/99)] and the definition of civil society contained in AG/RES. 1661 (XXIX-O/99), in keeping with the domestic legislation of the State Party under review. The Committee may request information from civil society organizations, for which purpose it shall develop the method it considers most appropriate."

This is the constitutive document of the Follow-up Mechanism. The adoption of a provision on the need to include civil society in the process, illustrates that the representatives of the States Parties were aware of the importance of this matter from the beginning.

The Rules of the Committee of Experts includes Section V on Participation of Civil Society Organizations, which establishes, at greater length and in more detail, a series of specific definitions:

> **Article 33. Civil Society Organizations Participation.** Organizations in OAS activities CP/RES. 759 (1217/99) and in accordance with the national legislation of the respective State Party, may:
>
> a. Present, through the Secretariat, specific proposals to be considered in the drafting process referred to in Article 18 of these *Rules*. These proposals should be presented with a copy in electronic format, within a time frame established by the Secretariat, which time frame will be made public.
>
> b. Present, through the Secretariat, documents with specific and direct information related to the questions that are referred to in the questionnaire with respect to the implementation, by a State Party under review, of the provisions selected for review within the framework of a round. These documents shall be presented, with a copy in an electronic format, given to the State Party in responding to the questionnaire.
>
> The Secretariat shall forward the documents that comply with the aforementioned conditions and terms before mentioned, to the State Party under review as well as to the members of the subgroup in charge of the preliminary review.
>
> c. Present proposal documents related to the collective interest issues that the *States Parties* have included in their annual working plan, in accordance with the provision in article 36(b) of these *Rules*. These documents shall be presented, through the Secretariat, with a copy in electronic format, no later than a month before the date of the meeting in which the *Committee* shall consider these issues. The Secretariat shall forward a copy of these documents to the lead experts via electronic mail.

The articles of this section of the Rules are fairly clear as to how CSOs can participate in the process. The Follow-up Mechanism recognizes three instances in which the participation of CSOs is necessary:

a. Presenting proposals, suggestions and observations when the Committee of Experts submits the review methodology for public opinion.

b. Presenting reports to the Committee of Experts through the Secretariat, when such documents review the situation in a specific country, in order to facilitate the work of the experts. This is the primary focus of this TAM.

c. Submitting proposals to the Committee of Experts for selection of issues of collective interest to the Mechanism in general and the experts in particular, in order to promote and facilitate cooperation among States Parties, as defined in the Purposes section of the Report of Buenos Aires.

The remaining provisions of this section in the Rules of the Committee of Experts offer guidelines for CSOs to deliver their prepared reports and documents.

The third document, Methodology for the Review of Implementation of Provisions of the Inter-American Convention Against Corruption Selected within the Framework of the First Round, is generally referred to as the Methodology. It defines not only the issues to be reviewed at each round but also the criteria to be applied.
This round examines the countries with regard to their effort to meet the provisions of:

a. Article III, paragraphs 1, 2, 4, 9 and 11;
b. Article XIV, and
c. Article XVIII[12].

Regarding CSO participation in the Follow-up Mechanism, Section VI on Sources of Information, in the Methodology document establishes:

> "Review of implementation of the selected provisions shall be carried out based on the answers to the questionnaire by the respective State Party, documents presented by civil society organizations in accordance with the Rules of the Committee, and any other pertinent information that the Secretariat and members of the Committee may obtain."

B. Strategies
This section proposes a strategy for CSOs to participate in the Follow-up Mechanism by produing an independent report. The proposal outlines a process that must be adapted to the context of the CSOs in each country. It also includes some practical examples developed in Latin America, that can serve as reference. The most frequently asked questions on the issue and possible participation strategies:

1. Are there any requirements to be met for participating in the Follow-up Mechanism?
As was indicated in the section on Legal Framework above, the Report of Buenos Aires establishes that participation must follow the Guidelines for the Participation of Civil Society Organizations in OAS Activities, contained in the Resolution of the Permanent Council CP/RES. 759 (1217/99). One of those conditions is registration.
The Resolution indicates:

> "This tradition of OAS cooperation with civil society organizations is based on the significant contributions these organizations can make to OAS work, since

[12]See the contents of these provisions in Appendix IV.

> they can contribute knowledge and additional information to decision-making processes, raise new issues and concerns that will subsequently be addressed by the OAS, lend expert advice in their areas of expertise, and contribute to consensus-building in many spheres."

In practical terms, the participation of NGOs is regulated through the provisions of the Report of Buenos Aires and the Rules of the Committee of Experts. On occasion the Committee of Experts may define specific dates for the presentation of independent reports, as well as the possibility of verbal presentations before review meetings.

2. To which agency must the independent reports be submitted?

Reports are presented to the Secretariat of the Follow-up Mechanism. The General Secretariat of the OAS, through the Technical Secretariat for Legal Cooperation Mechanisms of the Secretariat for Legal Affairs, performs the functions of the secretariat of the Mechanism. Specific regulations can be found in the Rules of the Committee of Experts, Chapter V and Articles 33 through 35.[13]

3. Should there be a single independent report by the civil society of each country?

The legal instruments that define the Follow-up Mechanism do not address this issue. Furthermore, Section VI of the Methodology speaks in the plural about "documents presented by organizations of the civil society." Civil society in each country is complex and can be represented by one or more organizations. The Committee has no jurisdiction to decide which organizations have the right to participate. Limiting participation to a single report would restrict the work of the Committee of Experts.

4. Must the civil society reports refer to all articles of the Convention being reviewed by the Committee of Experts?

The reports may refer to articles of the Convention in whole or in part, meaning all or some articles of the Convention being reviewed by the current round of the Follow-up Mechanism. The Follow-up Mechanism doesn't contain specific provisions on this subject.

The logic of the Follow-up Mechanism is that CSOs should produce reports according to their capabilities, interests and motivations. The Committee of Experts cannot force an NGO to produce a report on all articles the Committee is reviewing. There is also a practical reason: the Committee is interested in knowing as much as possible about each country in order to produce a balanced and responsible review. If the Committee were to establish criteria that restrict the production of information supporting its work, it would limit its own ability to produce a comprehensive report.

5. May NGOs collaborate to present reports, or must reports be presented individually?

CSOs may produce and send their reports to the Committee of Experts individually or collectively. In fact, in the case of civil society in Colombia, the independent report was produced by a single organization: Transparencia por Colombia. This NGO works to promote policies for transparency and control of corruption. In the case of Argentina, the report was produced by a group of organizations collectively named Commission to Follow up Compliance with the Inter-

[13] See the Rules of the Committee of Experts in Appendix III.

American Convention against Corruption.[14] In the case of the Dominican Republic, three civil society groups are doing parallel work to produce independent reports, which are likely to be submitted as a joint presentation.

6. May individuals present reports for the Follow-up Mechanism?
In principle, there's no specific limitation. Similarly, the Committee of Experts isn't restricted from seeking any information that could be useful in its review.

C. Producing an independent report
This section outlines a process for producing an independent report. As previously noted, the plan is flexible so that it can be adapted to each local context and the organization(s) producing the report.

The process is comprised of seven steps, each with an objective, activities and anticipated results. Since it should be adapted to each country, some of the following steps may be combined.

1. Identify the organization(s) that will produce the report
2. Train the organization(s)
3. Develop a work plan
4. Collect the information
5. Analyze the information
6. Write the report
7. Disseminate the report

1. Identifying the organization(s) that will produce the report
The goal at this stage is to agree on whether a single organization or a group of organizations will be responsible for producing the report.

An example of the first option is Transparencia por Colombia, an NGO that opted to prepare the report without working with other CSOs. An example of the latter option is the Argentine Commission for Follow-up of the Inter-American Convention Against Corruption. This Commission was formed as a result of an agreement signed by the *Colegio Público de Abogados de la Capital Federal* [Buenos Aires Bar Association], U.S. Transparency International and *Fundación Poder Ciudadano*, the Argentine Chapter of Transparency International. Invitations to participate were extended to a wider group of associations and CSOs.

In the case of the Dominican Republic, there are three groups. One utilizes advanced Law students from the *Pontificia Universidad Católica Madre y Maestra*. Another is a small group of CSOs dedicated to issues of judicial reform, transparency and control of public finances. The third is led by a group of CSOs that participated in an international conference on the Convention. Of the three, the first two have begun to produce limited-scope reports; the latter two are in the process of merging.

These examples illustrate that it is possible to use different organizational models to form the group that will prepare the report, or it can be prepared by a single organization.

[14]For more information on the organization, and to consult the report, see www.transparenciacolombia.org.co. The report also can be found at www.OAS.org. The first and second reports of the Argentine Commission for Follow up of the Inter-American Convention Against Corruption also can be found at www.OAS.org, in the section "Follow-up Mechanism for Implementation of the Inter-American Convention Against Corruption."

It is important to keep in mind:

a. CSOs that prepare the report should, as much as is possible, be working toward goals similar to those envisioned by the Convention. As a rule, such organizations will be more familiar with Convention issues.

b. It isn't necessary that the CSOs have thorough knowledge of Convention issues. Given the variety of subjects covered by the Convention, it would be almost impossible for one organization to be thoroughly familiar with them all. This, in fact, argues in favor of grouping organizations with diverse knowledge and experience. The Argentine Commission is a good example. It includes the bar association, association of public accountants and organizations that promote management control policies in the public sector—such as *Fundación Poder Ciudadano*—giving them a broad perspective on Convention issues.

c. After the Argentine Commission and the CSOs in the Dominican Republic were organized, their first activity was to conduct special training in order to improve the quality of the work.

   Training is an important consideration. In many cases, NGOs have only indirect knowledge of Convention issues. This knowledge can be maximized by increasing understanding of Convention content and relating it to existing capabilities.

d. The participating groups in the Argentine Commission and in the Dominican Republic decided it was necessary to create a set of working rules. This is a valid option, especially when the group is composed of many organizations. By creating disclosure and control criteria with regard to resources, such rules also can be a transparency mechanism if these commissions or groups receive financial contributions or other assistance.

e. It is usual for civil society groups to establish a working relationship with government agencies,[15] but they must careful to remain independent of the public entities.

   The Argentine Commission rules permit the involvement of some public agencies. But their role is limited to provide access to public information required to produce the independent report. Public agencies do not have a voice in the definition, production or approval the report[16]. Similarly, in the case of Transparencia por Colombia, the public sector cooperated by offering access to information. On the other hand, groups working in the Dominican Republic have not established specific working relationships with the

[15]See Roberto de Michele and Néstor Baragli, *El Seguimiento del Cumplimiento de la Convención Interamericana contra la Corrupción en la República Argentina. Una experiencia de trabajo conjunto entre la sociedad civil y el sector público. La Actuación de la Oficina Anticorrupción de la República Argentina en el Marco de la Convención Interamericana contra la Corrupción y su Mecanismo de Seguimiento* [Follow-Up of Compliance with the Inter-American Convention Against Corruption in Argentina. A joint work experience between civil society and the public sector. The work of the Argentine Anticorruption Office within the Framework of the Inter-American Convention Against Corruption and its Follow-up Mechanism], La Ley, Year LXVI, Number 220, Buenos Aires, 14 November 2002.

[16]See *Comisión de Seguimiento de la Convención Interamericana contra la Corrupción de Argentina, Primer Informe* [Argentine Commission for the Follow-Up of the Inter-American Convention Against Corruption, First Report].

public agencies from which they must request information they need to write their reports.

2. Training

The goal of this step is to ensure that the organization(s) working on the report have adequate technical knowledge of the issues. This step is very important because knowledge about the Convention, especially the Follow-up Mechanism, is likely to be limited.
Training must:

a. Convey the content and scope of the Convention. It also must demonstrate how the Follow-up Mechanism works, especially as regards CSO participation.

b. Facilitate the work of the CSOs, helping them to develop a work plan that matches their capabilities and is consistent with the activities of the Follow-up Mechanism.

c. It must ensure that the technical quality of the report is as high as possible. This is particularly important, since the experts who participate in the Follow-up Mechanism carry out a technical analysis of Convention compliance.

d. While there are several ways to evaluate the technical quality of a report, for purposes of the Follow-up Mechanism, quality is evidenced when the document objectively analyzes and describes whether a country's laws, institutions and policies are consistent with Convention mandates. The Follow-up Mechanism was not designed to address specific complaints or cases. It is a process that attempts to identify the causes and possible remedies of such situations. To a large extent, positive change will occur when there is greater capacity to identify regulations and public policies that are effective in preventing and controlling corruption.

e. Enable CSOs to define the scope of the report they are attempting to produce. The question these organizations must answer is whether they will prepare a report on all issues being reviewed (as with the Argentine Commission) or on a single issue (as was the case with Transparencia por Colombia and the civil society groups in the Dominican Republic, which are working on limited reports addressing specific subparagraphs).

   Here again, this decision must be based in the capacity, experience, knowledge and other variables among the individuals who will prepare the reports. In the case of the Dominican Republic, partial reports were selected, due in part to the fact that the participating organizations felt more confident dealing with topics about which they had either more access to information or more institutional experience.

f. Transform participating CSOs into effective agents for dissemination of the results of their reports.

Technical assistance from international donor organizations and cooperation agencies is important at this stage. In the Dominican Republic, assistance was provided through a program fi-

nanced by USAID and implemented by Casals & Associates. In Argentina, the government Anticorruption Office provided technical assistance to the Argentine Commission.[17]

The following results are expected from this step: 1) the organization(s) involved acquire(s) the necessary ability to prepare an independent report, and 2) as a consequence of better knowledge and understanding of the Convention and the Follow-up Mechanism, the organization(s) define(s) the scope of the report.

3. Developing a work plan

The goal of this step is to produce a work plan that will outline basic activities and facilitate performance of the tasks required for production of the report. It doesn't have to be sophisticated or complex as the example below demonstrates.

Activities	**Weeks**										
Develop work plan											
Collect information											
Analyze information											
Write report											
Disseminate report											

In practical terms, developing a work plan requires answering two central questions: 1) whether the report will cover all articles of the Convention being reviewed in the current round, or if it will refer only to specific articles or paragraphs, and 2) how to organize collection and processing of information, and writing and dissemination of the report.

The Argentine Commission reported on all articles of the Convention reviewed in the first round. On the other hand, Transparencia por Colombia and the Dominican Republic NGOs opted for reports limited to one paragraph of one specific article. Transparencia por Colombia focused on only one article because the organization had broad knowledge of the issue and therefore did not need significant external support. Another reason was the time the organization had to do the work.[18] The work plan must also determine the approximate time, resources and arrangements necessary to collect, process and review the information, then to produce and circulate the report. The product of this stage is a work plan for preparation of the report.

[17]See Roberto de Michele and Néstor Baragli, *El Seguimiento del Cumplimiento de la Convención Interamericana contra la Corrupción en la República Argentina* [Follow-Up of Implementation of the Inter-American Convention Against Corruption in Argentina].

[18]The report by Transparencia por Colombia refers to Article III, Number 11 of the Inter-American Convention Against Corruption, which states: "For the purposes contained in Article II of this Convention, the States Parties agree to consider the applicability of measures, within their own institutional systems, geared toward creating, maintaining and strengthening: 11. Mechanisms to stimulate the participation of civil society and non-government organizations in efforts to prevent corruption."

4. Collecting the information

The goal of this step is to collect all necessary information to prepare the report. This task must be consistent with the report's scope. Information sources include:

a. Local legislation related to the Convention article(s). For example, one of the groups working in the Dominican Republic groups, selected the provision by which public office holders disclose their income, assets and liabilities (Article III, paragraph 4 of the Convention), then legislation regulating this process must be reviewed.

b. Government responses to the questionnaire on the Follow-up Mechanism. The response to the questionnaire the official explanation on how a given State Party is implementing the Convention. Questionnaire responses are available to the public at www.oas.org, the OAS Web site.

c. Various international and multilateral agencies produce reports on such subjects as the rule of law, governance, transparency, control of corruption, civil society participation and other topics related to the issues of corruption and transparency.

d. The Organization of American States, the United Nations, the Inter-American Development Bank, the World Bank and the International Monetary Fund produce reports that can be used as references.

   Through its Global Program Against Corruption, for example, the UN has developed studies on the problem of corruption and strategies for addressing it. The World Bank Institute produces empirical and theoretical studies on how to confront corruption and increase transparency.

e. Non-governmental Organizations—Transparency International, for instance, regularly produces its Corruption Perception Index and its Bribery Perception Index. The Open Society Institute works on democracy and participation and Freedom House produces annual reports on civil liberties.

f. Reports from international development-assistance agencies—USAID and the Norwegian Agency for Development Cooperation (NORAD) have programs and information on transparency and corruption control. The Website www.respondanet.com, managed by Casals & Associates with USAID support, is an important source of up-to-date government accountability and transparency information.

   More recently, technical assistance consortia have been created that communicate via the Internet. The Utstein Anti-Corruption Resource Center, for example, was formed by agencies in Germany, the Netherlands, Norway and the United Kingdom. Its goal is to share data among its member agencies and to serve as an information center for best practices, strategies and liaison with study and research centers.[19]

   There may be relevant information available from agencies whose names do not indicate activities related to "transparency" or "control of corruption." Some Convention articles, such as the one contained in Article III, Paragraph 1, which requires " . . . Standards of conduct for the correct, honorable and proper fulfillment of public functions . . ." proba-

[19]The Website of the Utstein Anti-Corruption Resource Centre is www.u4.no.

bly can be found as part of a program of civil-service reform, rather than corruption control.

g. Other national and international information resources also exist, such as universities and research centers—national and foreign—and reports by such specialized publications as *The Economist*. The report prepared by Transparencia por Colombia for example, which focused on Article III, Paragraph 11 of the Convention, refers to numerous information resources:

   i. National Planning Department of the United Nations Development Agency; *Agencia Colombiana de Cooperación Internacional* (Colombian International Cooperation Agency); German Cooperation Agency and the Financial Fund for Development Projects. *Evaluación de la descentralización municipal en Colombia: balance de una década* (Evaluation of Municipal Decentralization in Colombia: a Decade of Experience) Bogota, 2002—From among the nation's municipalities, a representative sample of 148 where chosen for the study that was carried out between January 2000 and October 2001.

   ii. Sudarsky Rosenbaum**,** John. *El Capital Social en Colombia* (Social Capital in Colombia]. *Departamento Nacional de Planeación,*(National Planning Department). *Imprenta Nacional de Colombia* (National Printing Office). Bogota, November 2001—The study surveyed 3,000 people.

   iii. Transparencia por Colombia. *Para fortalecer el control ciudadano en Colombia: Estudio sobre la figura de la Veeduría Ciudadana en Colombia* (Strengthening Citizen Power in Colombia: Study of Citizen Watchdog Groups in Colombia). Transparency Notebook Collection. Notebook No. 2. Bogota, July-October 2000.

   iv. Note that one of the main sources of information for Transparencia por Colombia is a study produced by the NGO itself, demonstrating that the choice of an issue for the report is related to the institution's expertise.

   v. National opinion polls--All countries produce opinion polls, some of which address such issues as corruption, quality of public management, public services delivery, etc.

A significant amount of information is readily available to the public: legislation, the response of the government to the questionnaire and the reports produced by universities and multilateral agencies. While the job of collecting information may be difficult, there should be no major obstacles or restrictions to gathering much of it.

When information for the report is not readily available to the public, it may be necessary to take additional steps, such as formally requesting information in writing from the government or conducting interviews with public officials.

The Argentine Commission first sent an introductory letter to the agencies responsible for implementing Convention provisions and to the Anticorruption Office, explaining the goals of the Commission. A second letter detailed the specific information being requested.

A similar procedure was followed by CSOs in the Dominican Republic. The group working on the Article III, Paragraph 11 report (civil society participation) focused its search on academic centers that had worked on the issue.

When searching for information using this method, it is important that all requests be made formally in writing and a log of the requests be maintained. This demonstrates that a systematic process has been applied. If a formal request is sent to a public official who then doesn't respond, that lack of response should be registered and should be noted in the report.

In order to organize the work at this stage, it is helpful to create a matrix. One example is the matrix prepared by Law students of the *University Pontificia Universidad Católica Madre y Maestra* of the Dominican Republic, working on Article III, Paragraph 11 of the Convention:

Information collection matrix by PUCMM Article III, Paragraph 11		
Source	**Where**	**Person Responsible**
Response to questionnaire on Dominican Republic	Available	
Transparencia por Colombia report	Available	
Laws and Decrees Dec. 322-97 Dec. 407 – 01 Dec. 783 – 01 Dec 121 – 01 Dec 39 – 03 + proj. Rules Law 124 – 01 Law 1486 Law 19 – 01 + proj. Rules Project Code of administrative procedures	 Available Not Available Available Available Available Not Available Not Available Available / Not Available Not Available	
Mechanisms of Participation in General Draft bill on citizen participation Nuria Cunill Book Essays Other sources	 Available Available Mu-Kien Sang Flavio Dario Espinal	
a) Access to information mechanisms Draft bill on access to information	 Available	
b) Consultation mechanism Rules for public hearings by the Legislature	 Not Available	
c) Active participation mechanisms Citizen participation draft bill Papers	IBD/BM/WBI/TI/ONU Not Available Available	
d) Public Management Follow-up mechanisms Where is Dominican democracy headed? Interview Rafael Toribio Laws regarding Control agencies and systems to report acts of corruption CP and CPP PGR DPC Accounts Board National Comptroller's Office Ombudsman	 Available (interview) Available Available Available (PGR website) Available Available Not Available Available	

Note that this matrix follows the same format the Methodology document establishes for the questionnaire that countries use regarding Article III, Paragraph 11 of the Convention. This is consistent with the idea of producing a report that enables the experts to easily compare government responses with other sources of information, in this case an independent report.

As can be observed from the matrix, one of the steps at this stage is to assign responsibility for information collection.

The introduction of the report prepared by Transparencia por Colombia describes the methods used to collect information:

> "With regard to the methodology applied, it was decided that the format of the questionnaire would be followed. To collect secondary information, which was the basis for the responses, we identified and obtained all documentation related to citizen participation according to the new Constitution: regulatory framework, court decisions, as well as social and political research and studies.
>
> "In order to obtain the results of studies and research, agencies of the central government responsible for guiding and following up on the implementation of policies of citizen participation throughout the country were visited. These encounters included other control agencies in charge of promoting citizen participation. Besides Internet searches, contact was established with the most important civil society organizations whose mission is to promote citizen participation.
>
> "Rulings of the Constitutional Court on citizen participation were found on www.ramajudicial.gov.co, the Internet page of the Legislative branch of government, searching on key terms (right to participate, social control, citizen control, citizen watchdog and monitoring). When decisions were found, they were organized according to the following criteria: participation as a principle, scope, limitations and participation mechanisms.
>
> "On the issue of access to information, the practical experience of the *Observatorio de Integridad de Transparencia por Colombia* was considered important, relative to the design of the *Indice de Integridad de las Entidades Públicas de 2002* and the *Comparativo de Integridad de los Poderes del Estado de 2002.*
>
> "Armed with all relevant regulations, secondary information gathered and the results of the study by the *Observatorio de Integridad de Transparencia por Colombia*, the relevant legislation was classified, citizen participation in Colombia was reviewed and the questionnaire was filled out."

In its second report to the Committee of Experts, the Argentine Commission also refers to the methodology used:

> "In the preparation of the report, four sources of information were used: 1) the responses by various public agencies to the questions of the Commission (based on the Committee of Experts questionnaire); 2) specific studies carried out by different institutions regarding matters included in the Committee of Experts questionnaire; 3) "leading cases," and 4) statements by opinion leaders and current and former public officials, with whom working meetings were held."

As these examples demonstrate, the methodology used to collect information is related to the rules of access, availability of the information and other sources available.

The goal of this stage is to obtain the greatest amount of information possible. This stage is connected with the following one, when the information collected has to be assessed in terms of its usefulness for the independent report.

5. Analyzing the information

The goal of this step is to have key people who did the research share their opinions regarding the relevance and quality of the information obtained.

In some cases, information that was expected to be useful may have relative significance. In other cases, it may be determined that it is necessary to take other measures, such as sending new requests to public officials or conducting additional interviews to supplement the information in documents.

Two results should come from these group meetings:

a) Determination of the relevance of the information obtained, and
b) Selection of a small group to draft the report.

6. Writing the report

Writing the report requires that a small team, perhaps three people, be selected to prepare a draft. This team should have access to all information gathered and should request additional information if they consider it necessary.

What guidelines must be followed?

The report must be objective, precise and based on reliable information. In practical terms, this means that prejudices, personal charges and innuendo must be avoided. The report must describe how the requirements of the Convention have or have not been implemented.

The report should describe the extent to which the Convention is applied by government institutions in compliance with existing laws, public policies and practices. According to the rules of the Committee of Experts, the mere existence of institutions, laws and regulations related to Convention mandates is not a sufficient indicator of compliance.

The Methodology document establishes four criteria to evaluate whether a Convention provision is applied in a country:

a) **Level of progress in implementing the Convention—**The Committee shall review the advances made and shall identify the areas, if any, that require progress in implementing the Convention.

b) **Existence of a legal framework or other measures—**The Committee shall determine whether a State Party possesses a legal framework or other measures for implementation of the respective Convention provision.

c) **Adequacy of the legal framework or other measures—**If a State Party possesses a legal framework or other measures for implementation of the respective Convention provision, the Committee shall review whether they are appropriate to promote the purposes of the Convention: to prevent, detect, punish and eradicate corruption.

d) **Results of the legal framework or other measures—T**he preliminary review shall attempt to assess the degree to which objective results have been generated by application of the legal framework or other measures existing in the State Party, relative to implementation of a respective Convention provision.

These criteria are an excellent framework for structuring the independent report. Since the report will serve as a resource for the Committee of Experts for consultation and a point of comparison with the responses to the questionnaire from each country, if its structure reflects the sequence and type of information needed by the expert, it will accomplish its goal.

The Methodology document can establish additional and specific criteria, as is the case with the analysis of Article III, Paragraph 11 of the Convention.

In this regard, it's worthwhile to refer to the report from Transparencia por Colombia. Its Introduction states:

> "Therefore, the report prepared by Transparencia por Colombia contains a main document that answers the five section B questions from the chapter on civil society participation, related to the following mechanisms: participation in general, access to information, consultation, stimulation of active participation in public management and participation in the follow-up of public management. Additionally, Appendix 1 contains the regulations on section A questions in the same questionnaire."

How long should the report be?

There are no set guidelines. It's safe to assume, however, a maximum 25 pages for report, which is the same extension allowed to the State Parties replying to the questionnaire, exclusive of supporting documentation. Even though the scope of each report is different, the report by Transparencia por Colombia respects these guidelines, and the Argentine Commission report is almost identical.

The expected outcome of this step is that, once the draft report has been approved by the participating organizations, it will be adopted.

At this stage, it is important to keep in mind there are probably other CSOs that, without having participated in the process, are nevertheless interested in supporting the final report. Therefore, once the draft has been completed, an invitation should be issued to institutions that may wish to endorse it. The fact that a significant number of CSOs subscribe to the report's content strengthens its legitimacy and broadens its support base.

In the case of the organizations in the Dominican Republic, for example, it's expected that once the writing of the report has been completed, other organizations will be called upon to second the document.

The result expected from this step is approval of the report by the CSOs that participated in its preparation and adoption by other organizations that agree with its content.

7. Disseminating the report

This step requires a dual effort. First is to submit the report to the Follow-up Mechanism. As established in the Rules of the Committee of Experts, Article 33, Paragraph (b), reports are submitted to the Committee through the Secretariat of the Mechanism.[20]

Ideally, the report should be submitted concurrently with the submission by the States Party of its questionnaire response. It is reasonable to question whether or not an organization that does not submit its report at this time will be prohibited from doing so later on. Such a prohibition would be inconsistent with the spirit of other provisions of the Follow-up Mechanism, which is clearly open to participation by civil society. In fact, the Committee has accepted presentations beyond these deadlines, and at the moment is reviewing the deadlines to determine if they are unreasonable.

The second effort is local dissemination of the report. This is very important for CSOs working on follow-up and oversight of the government. A quality report should be an important technical resource for national dialogue on compliance with the Convention.

As an example, when the Argentine Commission completed its report and before submitting it to the Follow-up Mechanism, it generated extensive media coverage on the issues the report addressed.

In addition to distributing copies of the report to the media, it should also be provided to other targeted audiences, including:

- Public officials, in particular those responsible for implementation of the Convention.
- Scholars, research institutions and other technical centers that might add to the report.
- Political leaders with the capacity to initiate institutional and legal reforms.
- CSOs from other countries in the region with similar goals, in order to share and broaden the experience
- International donor organizations and agencies of international cooperation, so they can use the report in their analysis of each country and identify possible areas of assistance and cooperation

8. Does this complete the task?

Evaluating implementation of the Convention is an ongoing process by the Follow-up Mechanism. After the first round is completed, the Committee will select another set of provisions to evaluate. Therefore, experience acquired in this first initiative should serve as an excellent foundation for preparation of future reports. See Appendix VI for a comparison of the experiences of Argentina, Colombia and the Dominican Republic in preparing an independent report.

IV. Conclusion

The experiences of the NGOs in Argentina, Colombia and the Dominican Republic suggest that the practice of writing an independent report on application of the Convention is easily replicable in the region. But as this TAM illustrates, similar results can be reached by different means.

[20]The task of the Secretariat of the Mechanism is performed by the Technical Secretariat for Legal Cooperation Mechanisms, of the OAS Undersecretariat for Legal Affairs.

Perhaps the most concrete way to understand how the variants of this TAM can be useful for CSOs in different countries is training and exchange of experiences. Assistance for these activities is available through USAID and Casals & Associates.

This is an opportunity for CSOs to assume new responsibility in promoting transparency and the fight against corruption. It is important to keep in mind that this process is not about investigating and prosecuting corruption. Such activities belong to a different strategy. The Follow-up Mechanism opens the door to technical and constructive participation by CSOs.

Participation through preparation of independent reports on the application of the Convention can assume different characteristics. NGOs may act individually or collectively; may produce general or specific reports, or may include grassroots, professional or academic organizations. There is no single formula.

As this TAM demonstrates, however, it is important to understand the issues, acquire basic technical abilities and work in a systematic manner.

The benefits of this initiative extend beyond preparation of the report. The training and experience acquired, and dissemination of that experience at the local level, are valuable as models for participating in promoting transparency and accountability.

The reports also make it possible to follow up the recommendations of the Committee of Experts for each country. In the case of the recommendations for Colombia, for example, the Committee of Experts' document reflects contents of the report prepared by Transparencia por Colombia on Article III, Paragraph 11 of the Convention.

While some may be skeptical about reducing corruption, there are indications that the forces being marshaled against corruption are growing. In recent years, several legal instruments on corruption, and particularly on bribery, were approved: the Convention of the Organization for Economic Cooperation and Development, which has a follow-up mechanism similar to that adopted by the OAS and the Group of States against Corruption, made up of several European countries that carry out evaluation and follow-up procedures similar to those of the OAS. The United Nations has recently approved a Convention against Corruption.

These efforts and others, such as the fight against organized crime, are slowly but surely increasing the levels of international cooperation and assistance. There's growing awareness of the relationship between corruption and political and economic under-development. The view that corruption is created by "bad individuals"—typically public officials of less developed countries, who extort their fellow citizens and foreign investors—has been virtually abandoned. It is now understood that the phenomenon is more complex. It takes both someone prepared to give and someone prepared to take. The problem also becomes more serious when the difference between the economic resources of those prepared to offer and those prepared to receive is very large.
Systemic and structural issues must be faced that cannot be resolved simply by incarcerating individuals or stigmatizing those fallen from favor. Technically cohesive public policies and the political will to apply them are required.

Political will doesn't happen spontaneously. Civil society is responsible for demanding it.

Increased access to public information is also critical. Consensus is growing on the importance of freedom of information acts (FOIA) as a resource for citizens and media in monitoring public activities and influencing public policies. Without access to information, uninformed citizens are relegated to the role of passive observers of decisions that affect their rights made by third parties.

The Follow-up Mechanism demonstrates how citizens can be effectively and responsibly involved in evaluating their government, at the same time promoting practices that improve government transparency and reduce abuse of public resources and loss of legitimacy—requisites of all democratic governments.

APPENDIX I Inter-American Convention Against Corruption
(Adopted at the third plenary session
held on March 29, 1996)

THE MEMBER STATES OF THE ORGANIZATION OF AMERICAN STATES,

CONVINCED that corruption undermines the legitimacy of public institutions and strikes at society, moral order and justice, as well as at the comprehensive development of peoples;

CONSIDERING that representative democracy, an essential condition for stability, peace and development of the region, requires, by its nature, the combating of every form of corruption in the performance of public functions, as well as acts of corruption specifically related to such performance;

PERSUADED that fighting corruption strengthens democratic institutions and prevents distortions in the economy, improprieties in public administration and damage to a society's moral fiber;

RECOGNIZING that corruption is often a tool used by organized crime for the accomplishment of its purposes;

CONVINCED of the importance of making people in the countries of the region aware of this problem and its gravity, and of the need to strengthen participation by civil society in preventing and fighting corruption;

RECOGNIZING that, in some cases, corruption has international dimensions, which requires coordinated action by States to fight it effectively;

CONVINCED of the need for prompt adoption of an international instrument to promote and facilitate international cooperation in fighting corruption and, especially, in taking appropriate action against persons who commit acts of corruption in the performance of public functions, or acts specifically related to such performance, as well as appropriate measures with respect to the proceeds of such acts;

DEEPLY CONCERNED by the steadily increasing links between corruption and the proceeds generated by illicit narcotics trafficking which undermine and threaten legitimate commercial and financial activities, and society, at all levels;

BEARING IN MIND the responsibility of States to hold corrupt persons accountable in order to combat corruption and to cooperate with one another for their efforts in this area to be effective; and

DETERMINED to make every effort to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance,
HAVE AGREED to adopt the following

INTER-AMERICAN CONVENTION AGAINST CORRUPTION

Article I
Definitions

For the purposes of this Convention:
"Public function" means any temporary or permanent, paid or honorary activity, performed by a natural person in the name of the State or in the service of the State or its institutions, at any level of its hierarchy.

"Public official", "government official", or "public servant" means any official or employee of the State or its agencies, including those who have been selected, appointed, or elected to perform activities or functions in the name of the State or in the service of the State, at any level of its hierarchy.

"Property" means assets of any kind, whether movable or immovable, tangible or intangible, and any document or legal instrument demonstrating, purporting to demonstrate, or relating to ownership or other rights pertaining to such assets.

Article II
Purposes

The purposes of this Convention are:

1. To promote and strengthen the development by each of the States Parties of the mechanisms needed to prevent, detect, punish and eradicate corruption; and

2. To promote, facilitate and regulate cooperation among the States Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance.

Article III
Preventive Measures

For the purposes set forth in Article II of this Convention, the States Parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen:

1. Standards of conduct for the correct, honorable, and proper fulfillment of public functions. These standards shall be intended to prevent conflicts of interest and mandate the proper conservation and use of resources entrusted to government officials in the performance of their functions. These standards shall also establish measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions. Such measures should help preserve the public's confidence in the integrity of public servants and government processes.

2. Mechanisms to enforce these standards of conduct.

3. Instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities.

4. Systems for registering the income, assets and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registrations public.

5. Systems of government hiring and procurement of goods and services that assure the openness, equity and efficiency of such systems.

6. Government revenue collection and control systems that deter corruption.

7. Laws that deny favorable tax treatment for any individual or corporation for expenditures made in violation of the anticorruption laws of the States Parties.

8. Systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with their Constitutions and the basic principles of their domestic legal systems.

9. Oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts.

10. Deterrents to the bribery of domestic and foreign government officials, such as mechanisms to ensure that publicly held companies and other types of associations maintain books and records which, in reasonable detail, accurately reflect the acquisition and disposition of assets, and have sufficient internal accounting controls to enable their officers to detect corrupt acts.

11. Mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption.

12. The study of further preventive measures that take into account the relationship between equitable compensation and probity in public service.

Article IV
Scope

This Convention is applicable provided that the alleged act of corruption has been committed or as effects in a State Party.

Article V
Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offenses it has established in accordance with this Convention when the offense in question is committed in its territory.

2. Each State Party may adopt such measures as may be necessary to establish its jurisdiction over the offenses it has established in accordance with this Convention when the offense is committed by one of its nationals or by a person who habitually resides in its territory.

3. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offenses it has established in accordance with this Convention when the alleged

criminal is present in its territory and it does not extradite such person to another country on the ground of the nationality of the alleged criminal.

4. This Convention does not preclude the application of any other rule of criminal jurisdiction established by a State Party under its domestic law.

Article VI
Acts of Corruption

1. This Convention is applicable to the following acts of corruption:
   A. The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions;

   B. The offering or granting, directly or indirectly, to a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions;

   C. Any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party;

   D. The fraudulent use or concealment of property derived from any of the acts referred to in this article; and

   E. Participation as a principal, co principal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this article.

2. This Convention shall also be applicable by mutual agreement between or among two or more States Parties with respect to any other act of corruption not described herein.

Article VII
Domestic Law

The States Parties that have not yet done so shall adopt the necessary legislative or other measures to establish as criminal offenses under their domestic law the acts of corruption described in Article VI (1) and to facilitate cooperation among themselves pursuant to this Convention.

Article VIII
Transnational Bribery

Subject to its Constitution and the fundamental principles of its legal system, each State Party shall prohibit and punish the offering or granting, directly or indirectly, by its nationals, persons having their habitual residence in its territory, and businesses domiciled there, to a government official of another State, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage, in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official's public functions. Among those States Parties that have established transnational bribery as an offense, such offense shall be considered an act of corruption for the purposes of this Convention. Any State Party that has not established

transnational bribery as an offense shall, insofar as its laws permit, provide assistance and cooperation with respect to this offense as provided in this Convention.

Article IX
Illicit Enrichment

Subject to its Constitution and the fundamental principles of its legal system, each State Party that has not yet done so shall take the necessary measures to establish under its laws as an offense a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions. Among those States Parties that have established illicit enrichment as an offense, such offense shall be considered an act of corruption for the purposes of this Convention. Any State Party that has not established illicit enrichment as an offense shall, insofar as its laws permit, provide assistance and cooperation with respect to this offense as provided in this Convention.

Article X
Notification

When a State Party adopts the legislation referred to in paragraph 1 of articles VIII and IX, it shall notify the Secretary General of the Organization of American States, who shall in turn notify the other States Parties. For the purposes of this Convention, the crimes of transnational bribery and illicit enrichment shall be considered acts of corruption for that State Party thirty days following the date of such notification.

Article XI
Progressive Development

1. In order to foster the development and harmonization of their domestic legislation and the attainment of the purposes of this Convention, the States Parties view as desirable, and undertake to consider, establishing as offenses under their laws the following acts:

    A. The improper use by a government official or a person who performs public functions, for his own benefit or that of a third party, of any kind of classified or confidential information which that official or person who performs public functions has obtained because of, or in the performance of, his functions;

    B. The improper use by a government official or a person who performs public functions, for his own benefit or that of a third party, of any kind of property belonging to the State or to any firm or institution in which the State has a proprietary interest, to which that official or person who performs public functions has access because of, or in the performance of, his functions;

    C. Any act or omission by any person who, personally or through a third party, or acting as an intermediary, seeks to obtain a decision from a public authority whereby he illicitly obtains for himself or for another person any benefit or gain, whether or not such act or omission harms State property; and

    D. The diversion by a government official, for purposes unrelated to those for which they were intended, for his own benefit or that of a third party, of any movable or immovable property, monies or securities belonging to the State, to an independent agency, or to an individual, that such official has received by virtue of his position for purposes of administration, custody or for other reasons.

2. Among those States Parties that have established these offenses, such offenses shall be considered acts of corruption for the purposes of this Convention.

3. Any State Party that has not established these offenses shall, insofar as its laws permit, provide assistance and cooperation with respect to these offenses as provided in this Convention.

Article XII
Effect on State Property

For application of this Convention, it shall not be necessary that the acts of corruption harm State property.

Article XIII
Extradition

1. This article shall apply to the offenses established by the States Parties in accordance with this Convention.

2. Each of the offenses to which this article applies shall be deemed to be included as an extraditable offense in any extradition treaty existing between or among the States Parties. The States Parties undertake to include such offenses as extraditable offenses in every extradition treaty to be concluded between or among them.

3. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it does not have an extradition treaty, it may consider this Convention as the legal basis for extradition with respect to any offense to which this article applies.

4. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offenses to which this article applies as extraditable offenses between themselves.

5. Extradition shall be subject to the conditions provided for by the law of the Requested State or by applicable extradition treaties, including the grounds on which the Requested State may refuse extradition.

6. If extradition for an offense to which this article applies is refused solely on the basis of the nationality of the person sought, or because the Requested State deems that it has jurisdiction over the offense, the Requested State shall submit the case to its competent authorities for the purpose of prosecution unless otherwise agreed with the Requesting State, and shall report the final outcome to the Requesting State in due course.

7. Subject to the provisions of its domestic law and its extradition treaties, the Requested State may, upon being satisfied that the circumstances so warrant and are urgent, and at the request of the Requesting State, take into custody a person whose extradition is sought and who is present in its territory, or take other appropriate measures to ensure his presence at extradition proceedings.

Article XIV
Assistance and Cooperation

1. In accordance with their domestic laws and applicable treaties, the States Parties shall afford one another the widest measure of mutual assistance by processing requests from authorities that, in conformity with their domestic laws, have the power to investigate or prosecute the acts of corruption described in this Convention, to obtain evidence and take other necessary action to facilitate legal proceedings and measures regarding the investigation or prosecution of acts of corruption.

2. The States Parties shall also provide each other with the widest measure of mutual technical cooperation on the most effective ways and means of preventing detecting, investigating and punishing acts of corruption. To that end, they shall foster exchanges of experiences by way of agreements and meetings between competent bodies and institutions, and shall pay special attention to methods and procedures of citizen participation in the fight against corruption.

Article XV
Measures Regarding Property

1. In accordance with their applicable domestic laws and relevant treaties or other agreements that may be in force between or among them, the States Parties shall provide each other the broadest possible measure of assistance in the identification, tracing, freezing, seizure and forfeiture of property or proceeds obtained, derived from or used in the commission of offenses established in accordance with this Convention.

2. A State Party that enforces its own or another State Party's forfeiture judgment against property or proceeds described in paragraph 1 of this article shall dispose of the property or proceeds in accordance with its laws. To the extent permitted by a State Party's laws and upon such terms as it deems appropriate, it may transfer all or part of such property or proceeds to another State Party that assisted in the underlying investigation or proceedings.

Article XVI
Bank Secrecy

1. The Requested State shall not invoke bank secrecy as a basis for refusal to provide the assistance sought by the Requesting State. The Requested State shall apply this article in accordance with its domestic law, its procedural provisions, or bilateral or multilateral agreements with the Requesting State.

2. The Requesting State shall be obligated not to use any information received that is protected by bank secrecy for any purpose other than the proceeding for which that information was requested, unless authorized by the Requested State.

ARTICLE XVII
Nature of the Act

For the purposes of articles XIII, XIV, XV and XVI of this Convention, the fact that the property obtained or derived from an act of corruption was intended for political purposes, or that it is alleged that an act of corruption was committed for political motives or purposes, shall not suffice in and of itself to qualify the act as a political offense or as a common offense related to a political offense.

Article XVIII

Central Authorities

1. For the purposes of international assistance and cooperation provided under this Convention, each State Party may designate a central authority or may rely upon such central authorities as are provided for in any relevant treaties or other agreements.

2. The central authorities shall be responsible for making and receiving the requests for assistance and cooperation referred to in this Convention.

3. The central authorities shall communicate with each other directly for the purposes of this Convention.

Article XIX
Temporal Application

Subject to the constitutional principles and the domestic laws of each State and existing treaties between the States Parties, the fact that the alleged act of corruption was committed before this Convention entered into force shall not preclude procedural cooperation in criminal matters between the States Parties. This provision shall in no case affect the principle of non-retroactivity in criminal law, nor shall application of this provision interrupt existing statutes of limitations relating to crimes committed prior to the date of the entry into force of this Convention.

Article XX
Other Agreements or Practices

No provision of this Convention shall be construed as preventing the States Parties from engaging in mutual cooperation within the framework of other international agreements, bilateral or multilateral, currently in force or concluded in the future, or pursuant to any other applicable arrangement or practice.

Article XXI
Signature

This Convention is open for signature by the Member States of the Organization of American States.

Article XXII
Ratification

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article XXIII
Accession

This Convention shall remain open for accession by any other State. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

Article XXIV
Reservations

The States Parties may, at the time of adoption, signature, ratification, or accession, make reservations to this Convention, provided that each reservation concerns one or more specific provisions and is not incompatible with the object and purpose of the Convention.

Article XXV
Entry Into Force

This Convention shall enter into force on the thirtieth day following the date of deposit of the second instrument of ratification. For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article XXVI
Denunciation

This Convention shall remain in force indefinitely, but any of the States Parties may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. One year from the date of deposit of the instrument of denunciation, the Convention shall cease to be in force for the denouncing State, but shall remain in force for the other States Parties.

Article XXVII
Additional Protocols

Any State Party may submit for the consideration of other States Parties meeting at a General Assembly of the Organization of American States draft additional protocols to this Convention to contribute to the attainment of the purposes set forth in Article II thereof. Each additional protocol shall establish the terms for its entry into force and shall apply only to those States that become Parties to it.

Article XXVIII
Deposit of Original Instrument

The original instrument of this Convention, the English, French, Portuguese, and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall forward an authenticated copy of its text to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the United Nations Charter. The General Secretariat of the Organization of American States shall notify its Member States and the States that have acceded to the Convention of signatures, of the deposit of instruments of ratification, accession, or denunciation, and of reservations, if any.

Signed in Caracas, Venezuela, on March 29, 1996.

APPENDIX II Conference of States Parties
Buenos Aires, Argentina - May 2-4, 2001

Minutes of the Meeting

On May 2 to 4, 2001, States Parties to the Inter-American Convention Against Corruption met to establish a mechanism for follow-up on implementation of the Convention.

The meeting was held with the participation of delegations from the following States Parties: Argentina, The Bahamas, Bolivia, Canada, Chile, Costa Rica, Dominican Republic, Ecuador, El Salvador, Mexico, Nicaragua, Panama, Paraguay, Peru, United States, Republic of Uruguay and Venezuela, and with the participation of representatives from the following states not party to the Convention: Brazil, Guatemala and Haiti. Representatives of the Inter-American Development Bank and the Organization for Economic Cooperation and Development also participated.

The General Secretariat of the OAS provided secretariat services for this First Conference.

The First Conference is the result of work carried out in the framework of the OAS Working Group on Probity and Public Ethics pursuant to OAS General Assembly resolution AG/RES. 1723 (XXX-O/00). In addition, the recommendations of the meeting of the Group of Experts held in Washington, D.C., March 21 to 23, 2001, pursuant to OAS Permanent Council resolution CP/RES. 783 (1260/01), were the terms of reference considered at the Conference.

As a result of the discussion that took place in Buenos Aires, the First Conference of States Parties reached consensus, details of which are given in the report attached hereto, the "Report of Buenos Aires on the Mechanism for Follow-up on Implementation of the Inter-American Convention Against Corruption," which will be submitted to the Conference of States Parties to the Inter-American Convention for its consideration and possible adoption at the meeting thereof to be held during the thirty-first regular session of the General Assembly of the OAS, in San José, Costa Rica, from June 3 to 5, 2001.

Done in Buenos Aires, on the fourth day of May 2001.

REPORT OF BUENOS AIRES ON THE MECHANISM FOR FOLLOW-UP OF IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION

PREAMBLE

The purpose of the Inter-American Convention Against Corruption is to promote and strengthen cooperation among States Parties and to develop mechanisms needed to prevent, detect, punish and eradicate corruption.

Considerable progress has already been made in implementing the provisions of the Inter-American Convention Against Corruption at the national level, and significant developments have also taken place at subregional and international levels, especially through the Inter-American Program for Cooperation in the Fight Against Corruption.

A Mechanism to follow up on and review how such developments are being implemented and to facilitate cooperation among States Parties and among all member states of the OAS will assist in attaining the objectives of the Convention. This Mechanism must take account of the need for gradual progress in attaining those objectives and must support programs for implementation of the Convention pursued by the States Parties.

This Mechanism is established in fulfillment of the Plan of Action signed at the Third Summit of the Americas, in Quebec City, Canada, in whose chapter on corruption the Heads of State and Government undertook to support the establishment, as soon as possible, taking into consideration the recommendation of the OAS, of a Follow-up Mechanism on Implementation of the Inter-American Convention Against Corruption by the States Parties to this instrument.

1. Purposes
The purposes of the Mechanism shall be:

a. To promote the implementation of the Convention and contribute to attaining the purposes set forth in Article II thereof;

b. To follow up on the commitments made by the States Parties to the Convention and to study how they are being implemented, and

c. To facilitate technical cooperation activities; the exchange of information, experience and best practices, and the harmonization of legislation of the States Parties.

2. Basic principles
Development of the Mechanism for Follow-up of the commitments of the States Parties to the Convention shall be guided by the purposes and principles established in the Charter of the Organization of American States. Therefore, the powers accorded to it and the procedures it follows shall take account of the principles of sovereignty, nonintervention and the juridical equality of the states, as well as the need to respect the Constitution and the fundamental principles of the legal system of each State Party.

3. Characteristics
The Mechanism for Follow-up on Implementation of the Convention shall be intergovernmental in nature and shall have the following characteristics:

a. It shall be impartial and objective in its operations and in the conclusions it reaches.

b. It shall ensure equitable application and equal treatment among States Parties.

c. It shall not entail the adoption of sanctions.

d. It shall establish an appropriate balance between the confidentiality and the transparency of its activities.

e. It shall be conducted on the basis of consensus and cooperation among States Parties.

4. Members of the Follow-up Mechanism
Only States Parties to the Convention shall participate in the Follow-up Mechanism.

5. Structure and responsibilities
The Follow-up Mechanism shall be comprised of two bodies: the Conference of States Parties and the Committee of Experts.

All States Parties shall be represented in the Conference. It shall have general authority to implement and responsibility for implementation of the Mechanism and shall meet at least once each year.

The committee shall be comprised of the experts appointed by each of the States Parties. It shall be responsible for technical analysis of the implementation of the Convention by the States Parties, among other tasks related to this main function. The Committee may request assistance and guidance from the Conference, which shall meet to consider such requests.

Secretariat services for the Mechanism shall be provided by the General Secretariat of the Organization of American States.

6. Headquarters
The headquarters for the Follow-up Mechanism shall be at the headquarters of the Organization of American States.

7. Activities

a. The Committee shall adopt and disseminate its rules of procedure and other provisions.

b. Country reports

I. Selection of provisions and methodology
The Committee of Experts shall select, from among the provisions of the Convention, those whose application by the States Parties may be reviewed, seeking to maintain general balance among the various types of provision contained in the Convention,

and shall determine the length of time it will devote to this task, which shall be known as a "round." The committee shall devise a method for the review of each provision, designed to ensure that sufficient reliable information will be obtained. The Committee shall publish the information referred to in this paragraph.

At each round, the Committee shall prepare a questionnaire on the provisions selected, based on OAS document CP/GT/PEC-68/00 rev. 3, "Questionnaire on Ratification and Implementation of the Inter-American Convention Against Corruption," and shall forward it to those States Parties to be reviewed. The States Parties shall undertake to reply to the questionnaire by the deadline established by the committee. The replies to the questionnaire shall be distributed to all committee members.

II. Selection of countries

The Committee shall use an impartial method for setting the dates for review of the information on each State Party, such as their presentation on a voluntary basis, chronological order of ratification of the Convention, or lot. The Committee shall give adequate advance notice of the dates for the review of each State Party during each round.

III. Review of information and preliminary report

To expedite its work, the committee shall establish a subgroup in each case, comprised of experts from two States Parties, which shall review, with support from the Secretariat, the information on each State Party.

On the basis of that review, each subgroup shall prepare, with support from the Secretariat, a confidential preliminary report, which shall be made available to the State Party concerned for its observations.

Each subgroup shall prepare a revised version of the preliminary report, taking into account the observations presented by the State Party concerned, and present it to a plenary meeting of the Committee for its consideration.

The plenary meeting of the Committee shall prepare the conclusions and, if deemed appropriate, make the recommendations it considers pertinent.

IV. Final report

After completing, at each round, its review of the reports for all States Parties, the Committee shall issue a final report for each State Party, containing the observations of the State Party reviewed, which shall be forwarded first to the Conference and then published.

c. Cooperation

Mindful of the purposes of the Follow-up Mechanism and in the framework of the Inter-American Program for Cooperation in the Fight Against Corruption, the Committee shall strive to cooperate with all OAS member states, taking account of the activities already under way within the Organization, and shall report to the Conference thereon.

The Committee shall undertake systematic consideration of the issues involved in cooperation and assistance among States Parties in order to identify the areas where technical cooperation is needed and the most appropriate methods for collection of useful data to

review such cooperation and assistance. This work shall take account of the provisions of Articles XIII through XVI and Article XVIII of the Convention.

d. Observers
States that are not parties to the Inter-American Convention Against Corruption may be invited to observe the plenary meetings of the committee of experts if they so request.

8. Civil society participation
In order to obtain better input for its review, the Committee shall include in the provisions governing its operation an appropriate role for civil society organizations, taking into account the "Guidelines for the Participation of Civil Society Organizations in OAS Activities" [CP/RES. 759 (1217/99)] and the definition of civil society contained in AG/RES. 1661 (XXIX-O/99), in keeping with the domestic legislation of the State Party under review. The Committee may request information from civil society organizations, for which purpose it shall develop the method it considers most appropriate.

9. Resources
The activities of the Follow-up Mechanism shall be funded by contributions from States Parties to the Convention, from states that are not parties to the Convention, and from international financial organizations and by any other contribution that may be received in accordance with the General Standards to Govern the Operations of the General Secretariat, including a specific fund that may be established. Such contributions may include offers by States Parties to organize and host meetings of the bodies of the Mechanism. The Conference of States Parties may establish criteria for determining the amounts of regular contributions.

10. Periodic review of the Mechanism
The Conference shall periodically review the operation of the Mechanism, taking account of observations made by the Committee of Experts, and may introduce such changes as it deems appropriate.

11. Transitory provision
To facilitate the work of the first meeting of the committee, the Conference considers that topics the committee might analyze at its first round are, *inter alia*:

a. Article III, selecting as many measures as the Committee considers appropriate;
b. Article XIV, and
c. Article XVIII.

In the event that the Committee of Experts encounters difficulties in conducting a review of all topics indicated, it shall report such difficulties to the Conference so that body may take such decisions as it deems appropriate at its next Conference.

The Conference also suggests that, during its first year of operation, the Committee of Experts hold at least two meetings.

APPENDIX III Rules of Procedure and Other Provisions

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

I. SCOPE OF THE RULES OF PROCEDURE AND OTHER PROVISIONS

Article 1. Scope of the Rules of Procedure and Other Provisions. *The Rules of Procedure and Other Provisions* (hereafter *Rules*) shall prescribe the structure and operation of the Committee of Experts (hereafter *Committee*) of the Mechanism for Follow-up (hereafter *Follow-up Mechanism*) on Implementation of the Inter-American Convention Against Corruption (hereafter *Convention*).

The *Committee* shall have the responsibility of undertaking its activities within the framework of the purposes, basic principles, characteristics and other provisions established in the "Report of Buenos Aires on the Mechanism for Follow-up on Implementation of the Inter-American Convention Against Corruption" (hereafter *Report of Buenos Aires*), of the decisions that are adopted by the Conference of States Parties and, pertinently, of the Organization of American States (OAS) Charter.

The *Committee* may resolve those matters not addressed by these *Rules,* the *Report of Buenos Aires* or the OAS Charter in accordance with the provisions in Article 3(k) and Article 13.

II. STRUCTURE AND RESPONSIBILITIES OF THE COMMITTEE

Article 2. Composition. The *Committee* shall be comprised of the experts appointed by each of the States Parties that are members of the *Follow-up Mechanism* (hereafter *States Parties*).

Each State Party shall notify the Secretariat of the name or names and personal information (address, e-mail address, phone and fax number) of the expert or experts that will represent it in the *Committee*. When more than one expert is appointed, the State Party shall indicate the name of the expert who shall lead the group. In this case, the lead expert shall be the contact point for the Secretariat in distributing documents and for all communications.

Each State Party shall notify the Secretariat when there is a change in its representation to the *Committee.*

Article 3. Responsibilities of the Committee. In accordance with the *Report of Buenos Aires,* the *Committee* shall be responsible for the technical analysis of the implementation of the *Convention* by the *States Parties*. In performing this function, the *Committee* shall undertake the following:

a. Adopt its annual working plan, for which the Secretariat will develop a draft in conformity with the provisions in Article 9(a) of these *Rules.*

b. Select, from among the provisions of the *Convention*, those whose implementation by all of the *States Parties* shall be reviewed, seeking to include both preventive measures and other provisions contained in the *Convention*, and determine the length of time it shall devote to this task, which shall be known as a "round."

c. Adopt a methodology to review implementation of *Convention* provisions selected for review in each round that is designed to ensure that sufficient reliable information is obtained. The adoption of this methodology shall comply with the procedure described in Article 18 of these *Rules.*

d. Adopt a questionnaire on the provisions selected for review in each round, based on OAS document CP/GT/PEC-68/00 rev. 3 "Questionnaire on Ratification and Implementation of the Inter-American Convention Against Corruption" and in accordance with Article 18 of these *Rules.*

e. Select, in each round, an impartial methodology (such as presentation on a voluntary basis, in chronological order of ratification of the *Convention* or by lot) for setting the dates for review of the information on each State Party.

f. Determine the composition of each subgroup, to be comprised of experts from two *States Parties* in accordance with Article 20 of these *Rules*, which shall review, with support from the Secretariat, the information on the State Party they have been assigned to review.

g. Adopt the country reports in regard to each of the *States Parties* and a final report at the end of each round, in accordance with articles 21 to 26 of these *Rules.*

h. Promote and facilitate cooperation among the *States Parties*, within the framework of the *Convention* and in accordance with the *Report of Buenos Aires* and Article 36 of these *Rules.*

i. Approve a yearly activity report, which shall be forwarded to the Conference of States Parties.

j. Review periodically the operation of the *Follow-up Mechanism* and propose any recommendations it considers pertinent to the Conference of States Parties regarding the *Convention* and the *Report of Buenos Aires*.

k. Request assistance and guidance from the Conference of States Parties, when it considers it necessary or convenient in fulfilling its responsibilities.

Article 4. Chair and Vice-Chair. The *Committee* shall have a Chair and a Vice-Chair, who will be elected separately from among its members for a one-year term and may be re-elected for the following year.

If the Chair or Vice-Chair ceases to serve as representatives of their respective States, then their term as such would be terminated.

If the Chairman ceases to serve as a representative of a State Party or resigns before the term is concluded, the Vice-Chair shall assume the responsibilities of Chair and the *Committee* shall elect a new Vice-Chair for the remainder of the term.

If the Vice-Chair were to cease serving as a representative of a State Party or resigns before the term is concluded, the *Committee* shall elect a new Vice-Chair for the remainder of the term.

In the case of a permanent absence of both the Chair and Vice-Chair, their replacements shall be elected during the following *Committee* meeting, according to the procedure established by these rules.

Elections of the Chair and Vice-Chair shall be by consensus. In the case of not reaching consensus on the decision it shall be adopted by one half plus one of the lead experts of the *States Parties*, through a secret vote.

Article 5. Responsibilities of the Chair. The Chair shall have the following responsibilities:

a. Coordinate with the Secretariat the various activities related to the operation of the *Committee*.

b. Open and adjourn all meetings and direct the discussions.

c. Submit to the *Committee* for its consideration the topics that are part of the approved order of business for each meeting.

d. Decide on points of order that may arise during deliberations.

e. Put motions to a vote and announce the results thereof.

f. Represent the *Committee* before the Conference of States Parties, OAS organs and other institutions.

g. Submit to the *Committee* for its consideration the proposals on the composition of the preliminary review subgroups, to be comprised of experts from two *States Parties*, which shall review, with support from the Secretariat, the information received from a reviewed State Party.

h. All other responsibilities conferred by these *Rules* and the *Committee.*

Article 6. Temporary leave of Chair. When the Chair or Vice-Chair is presiding the *Committee*, he or she must be excused temporarily from the Chair duties when review and approval of the country report in regards to the State Party he or she represents takes place.

Article 7. Responsibilities of the Vice-Chair. The Vice-Chair shall assume the duties of the Chair in the temporary or permanent absence of the Chair and shall assist the Chair in the performance of his or her activities.

Article 8. Secretariat. The Secretariat of the *Committee* shall be undertaken by the OAS General Secretariat.

As a result, matters regarding the Secretariat's technical and administrative personnel, as well as its structure and responsibilities, shall adhere to the provisions in the OAS Charter, the General Standards to Govern the Operations of the General Secretariat of the OAS approved by its General Assembly, and the decisions that the Secretary General may adopt in developing said General Standards.

Article 9. Responsibilities of the Secretariat. The Secretariat shall have the following responsibilities:

a. Prepare an annual draft working plan of the *Committee*, which shall include the respective proposals in regards to the number of *States Parties* that will be reviewed in said period, the meetings that will be held for such review and a timetable to complement said activities, and submit it to the *Committee* for its consideration.

b. Send convocation notices for all *Committee* meetings.

c. Prepare the draft order of business for each *Committee* meeting.

d. Prepare the methodology and questionnaire proposals for review of the selected *Convention* provisions, whose application shall be reviewed in a round, and submit them to the *Committee* for its consideration and approval, in accordance with Article 18 of these *Rules.*

e. Support the subgroups of experts in the process of reviewing the information received from the *States Parties* and in preparing and presenting the preliminary reports referred to in provision 7(b)(iii), of the *Report of Buenos Aires.*

f. Prepare a draft Final Report at the end of each round, submit it to the *Committee* for its consideration and, once the Final Report is adopted by the *Committee*, forward it to the Conference of States Parties.

g. Prepare a draft *Committee* Annual Report and, once said Report is adopted by the *Committee*, forward it to the Conference of States Parties.

h. Serve as a custodian for all the documents and files of the *Committee*.

i. Disseminate, through the *Internet* and by any other means of communication, information and public documents related to the *Follow-up Mechanism*, as well as the country and final reports of each round, once they are made public in accordance with these *Rules*.

j. Serve as the central coordinating and contact point for the delivery and exchange of documents and communications between the experts, as individuals or as a *Committee,* with the Conference of States Parties, OAS organs and other organizations or institutions.

k. Notify the *Committee* members of communications received or submitted to them for their consideration, unless they are significantly beyond the scope of the responsibili-

ties of the *Committee* or in the case of Civil Society Organizations that do not comply with the requirements or time periods prescribed in Article 33 of these *Rules*.

l. Prepare the minutes of *Committee* meetings and maintain its files.

m. Update periodically information on the progress made by each State Party regarding the implementation of the *Convention*, based on the information submitted by them, directly or within the framework of the *Committee* meetings in accordance with Article 30 of these *Rules.*

n. Prepare or coordinate the preparation of research papers, investigations or studies on topics related to the *Committee*'s responsibilities, which shall be submitted to the *Committee* for its consideration in conformity with Article 36(b) of these *Rules.*

o. Advise the Chair, Vice-Chair and the *Committee* members in undertaking their responsibilities when requested.

p. Promote and organize programs of technical cooperation in conjunction with other international cooperation organizations and agencies to support the *States Parties* in their efforts to comply with the recommendations that are made by the *Committee*.

q. All other responsibilities that the *Committee* may assign to the Secretariat or those that may be necessary for the effective fulfillment of its responsibilities.

Article 10. Means for delivery of communications and distribution of documents. In order to facilitate distribution and minimize costs, the communications between the Secretariat and lead experts (and vice-versa), as well as the documents for consideration by them individually, in subgroups or in plenary *Committee* meetings, shall be forwarded via electronic mail with a copy to be sent to the Permanent Mission of the respective State Party to the OAS.

The responses to the questionnaires by the *States Parties*, and whatever other documents they or the lead expert may forward for distribution among the *Committee* members, shall also be forwarded to the Secretariat in an electronic form.

In extraordinary cases, when no electronic version exists of the documents, they shall be forwarded, preferably, via fax and, as a last alternative, via regular mail.

Article 11. Languages. The working languages of the *Committee* are the languages of the *States Parties,* which are at the same time the official languages of the OAS.

Article 12. Quorum. Quorum for meeting shall constitute the presence of one-half plus one of the lead experts that represent the *States Parties*.

Article 13. Decisions. As a general rule, the *Committee* shall make its decisions by consensus.

In those cases where there is a controversy in regard to a decision, the Chair shall undertake the good offices and all the measures at the Chair's disposal in trying to reach a con-

sensus among the *Committee* members. Once the Chair considers that this path has been exhausted and that a decision by consensus is not possible, the issue shall be put to a vote. In this event, decisions shall enter into force with a vote of two-thirds of the lead experts present, if the issue is with regard to the adoption of a country or final report or the amendment of these *Rules*. In all other cases, the decision shall enter into force by a vote of one-half plus one of the lead experts present. In this last case, all votes shall be yes, no or be an abstention.

A lead expert shall abstain from voting when the *Committee* is considering his or her State Party's draft preliminary report.

Article 14. Consultations by electronic means. In periods between meetings, the *Committee* may consult through electronic means of communication.

Article 15. Observers. In accordance with Provision 7(d) of the *Report of Buenos Aires*, States that are not *States Parties* may be invited to observe the plenary meetings of the *Committee* if they so request.

Article 16. Headquarters. In accordance with provision 6 of the *Report of Buenos Aires*, the *Committee*, as an entity, shall have its headquarters at the OAS.

Article 17. Funding. The *Committee's* activities will be funded in accordance with Provision 9 of the *Report of Buenos Aires.*

III. REVIEW PROCEDURE

Article 18. Selection of provisions, determination of a round and adoption of methodology and questionnaire. The procedure for selection of provisions, determination of a round and adoption of a methodology and questionnaire for the review of implementation by *States Parties* of the provisions of the *Convention*, shall be the following:

a. The *Committee* shall select the *Convention* provisions whose implementation by the *States Parties* shall be reviewed, seeking to include both preventive measures and other provisions contained in the *Convention*. This information shall be made public once the *Committee* selects the respective provisions.

b. The Secretariat shall prepare the methodology and questionnaire proposals for the review of said provisions and shall forward them to the lead experts of all the *States Parties* and shall publish them via the *Internet* and by any other means of communication in accordance with Article 33, no later than thirty (30) days before the date of the *Committee* meeting that will consider said methodology and questionnaire.

c. The *Committee* in plenary shall adopt the final versions of the methodology and questionnaire, and shall determine the length of time it will devote to review of the implementation by the *States Parties* of those provisions selected, which shall be known as a round.

d. The final versions of the methodology and questionnaire shall be disseminated by the Secretariat via the *Internet* and by any other means of communication.

Article 19. Definition of the review process of the *States Parties*. At the beginning of every round, the *Committee* shall:

a. Adopt an impartial methodology (such as presentation on a voluntary basis, chronological order of ratification of the *Convention*, or lot) for setting the dates for review of the information on each State Party.

b. Determine the number of *States Parties* whose information shall be the subject of review in each meeting so as to complete the round within the planned time frame.

c. Determine, as a minimum and in accordance with the impartial methodology referred to in Paragraph (a) of this article, the *States Parties* whose information shall be the subject of review for the first meeting within the framework of a round.

In the event that in the beginning of a round only the *States Parties* whose information shall be the subject of review in the next meeting are selected, then in accordance with the impartial methodology adopted for the entire round, the *States Parties* whose information shall be the subject of review for the following meeting shall be selected.

The information that is referred to in this article shall be made public once the *Committee* reaches the decisions herein mentioned.

Article 20. Composition of subgroups for review of the information and the preliminary report. The *Committee*, based on the proposal prepared by the Secretariat in coordination with the Chair, shall determine the composition of the subgroups with experts (one or more) from two *States Parties* that, with support from the Secretariat, shall review the information and prepare the preliminary reports on each State Party whose information shall be reviewed in the next meeting by the *Committee*.

In selecting the members of a subgroup consideration shall be given to the historical legal tradition of the State Party whose information shall be the subject of review.

Consideration will be given to avoid the selection, to a subgroup, of experts from a State Party that has been reviewed by the State Party under review in that round.

Each State Party shall endeavor to be part of a subgroup on at least two occasions in each round.

Article 21. Questionnaire response. Once the final version of the questionnaire is agreed upon, the Secretariat shall forward it, in electronic format, to the State Party whose information shall be the subject of review, through its Permanent Mission to the OAS, with a copy to the lead expert on *Committee* of said State Party.

The State Party shall, through its Permanent Mission to the OAS, forward to the Secretariat the responses to the questionnaire, in electronic format, with all the supporting documents, within the time period that the *Committee* sets in each round.
The lead experts shall take all the necessary measures in ensuring that their respective *States Parties* respond to the questionnaire within the time period referred to in the previous paragraph.

Article 22. Coordinating governmental unit in regard to the questionnaire. In all matters related to the forwarding and response of the questionnaire, each State Party shall identify the coordinating governmental unit and notify the Secretariat. The Secretariat shall then register said unit.

Article 23. Procedure for review of the information and preparation of the preliminary report. Once responses to the questionnaire are received, the procedure shall be as follows:

a. The Secretariat shall prepare a draft preliminary report;

b. The Secretariat shall forward the draft preliminary report to the corresponding subgroup for its comments;

c. The subgroup shall forward to the Secretariat any comments they may have in regard to the draft preliminary report;

d. The Secretariat shall forward the draft preliminary report and the comments of the subgroup to the State Party under review for clarification;

e. Upon receipt of its draft preliminary report, the State Party being reviewed shall respond to the comments of the subgroup and the Secretariat;

f. On the basis of the responses of the State Party being reviewed to the comments of the subgroup, the Secretariat shall prepare a revised draft preliminary report, which it shall forward to the *Committee* at least two weeks before the subsequent *Committee* meeting for consideration.

Article 24. Preliminary review meeting of the subgroup and the State Party under review. The representatives of each reviewed State Party shall meet with the members of the subgroup in charge of the preliminary review and with the Secretariat the day before the beginning of the *Committee* meeting in which the said preliminary report shall be considered.

This meeting shall have as its purpose the revision or clarification of those areas of the draft preliminary report where discrepancies in regard to its content or form may still exist and establish a methodology for the presentation of the draft preliminary report in the plenary of the *Committee*.

Based on the information received from the reviewed State Party, the subgroup may agree to change the text of the draft preliminary report or maintain it as is for its presentation to the *Committee*. The members of the subgroup shall also agree upon the presentation format of their preliminary report to the plenary of the *Committee*.

Article 25. Consideration and approval of the country report in the *Committee.* For the consideration and adoption of the report, the *Committee* shall proceed as follows:

a. The members of the subgroup in charge of the preliminary review shall briefly present the content and scope of the preliminary report.

b. The reviewed State Party shall make a brief statement in regard to the preliminary report.

c. A discussion, open to the *Committee* as a whole, shall then begin on the preliminary report.

d. The plenary of the *Committee* may make any specific changes to the preliminary report it considers necessary, prepare the conclusions and, if deemed appropriate, make any recommendations it considers pertinent.

e. In accordance with the spirit of Provision 3(e) of the *Report of Buenos Aires,* the *Committee* shall strive to base its recommendations, if any, on the principles of consensus and cooperation.

f. The Secretariat shall revise the report as agreed by the *Committee* and shall present the revised report to the *Committee* for its approval.

g. Once the country report is approved in accordance with the provisions mentioned in the previous paragraphs, the reviewed State Party may authorize the Secretariat to publish it, along with the observations they may have presented, via the Internet or through any other means of communication.

Article 26. Final Report. At the end of a round, the *Committee* shall adopt a final report that shall include the individual country reports in relation to each one of the *States Parties* and the observations that each of them had to their reports. Likewise, it shall include an overall review that contemplates, among other things, the conclusions that are arrived at in the country reports and the recommendations of a collective nature in respect to following up on the results of said reports, such as the actions that are recommended in consolidating or strengthening hemispheric cooperation on the issues that are referred to in the provisions under consideration in each round or that are closely related to them.

The final report shall be forwarded to the Conference of States Parties and shall subsequently be made public.

Article 27. Documents. In each round the Secretariat shall recommend the format, characteristics and length of the documents that will circulate within the framework of the *Committee*'s responsibilities, allowing each State Party the possibility of providing additional documents it considers necessary.

Article 28. Length and format of the country report. All country reports shall have the same structure. This structure is to be considered and approved by the *Committee* in the same manner as foreseen in Article 18 in adopting the methodology and questionnaire.

Article 29. Review of new States Parties. Once a State Party becomes part of the *Follow-up Mechanism*, it shall:

a. Respond to the previously adopted questionnaires.

b. Be reviewed by the subgroup assigned to follow up on its compliance with the *Convention* provisions that were considered in previous rounds as well as of those that are being reviewed within the framework of the developing round at the moment the State becomes a State Party.

IV. FOLLOW-UP

Article 30. Reports within the framework of the *Committee* meetings. At the beginning of each *Committee* meeting, each of the *States Parties* shall report on the measures it has adopted, between the previous meeting and the present one, and on the progress it has made in implementing the *Convention*. The Secretariat shall always include this issue in the draft order of business for each *Committee* meeting.

Article 31. Follow-up within the framework of future rounds. At the start of a new round, there shall be included as a section within the questionnaire a chapter with specific questions that will enable the review of the progress made by each State Party in implementing the recommendations included in its individual country report adopted in the previous rounds.

Based on the information received on this point, the individual country report shall review the progress made in the implementation of the recommendations adopted in the previous country reports. In this respect, the report may congratulate a State Party on specific progress made or urge it to comply, in those cases where there has been no progress made in regards to previous country reports.

Article 32. Visits for follow-up. In following up on the provisions reviewed and recommendations made within the framework of a round, as part of the methodology and cooperation efforts in accordance with provisions 3 and 7(b)(i) of the *Report of Buenos Aires*, the *Committee* may establish visits by the members of the subgroups to all reviewed *States Parties* in future rounds.

In addition, visits may be undertaken when the reviewed State Party requests said visit.

V. CIVIL SOCIETY ORGANIZATIONS PARTICIPATION

Article 33. Civil Society Organizations participation. Upon publication of draft questionnaires, instruments of methodology and any other documents that the *Committee* deems appropriate, civil society organizations, taking into account the Guidelines for the Participation of Civil Society Organizations in OAS activities CP/RES. 759(1217/99), and in accordance with internal legislation of the respective State Party, may:

a. Present, through the Secretariat, specific proposals to be considered in the drafting process referred to in Article 18 of these *Rules*. These proposals should be presented with a copy in electronic format, within a time frame established by the Secretariat, which time frame will be made public.

b. Present, through the Secretariat, documents with specific and direct information related to the questions that are referred to in the questionnaire with respect to the implementation, by a State Party under review, of the provisions selected for review

within the framework of a round. These documents shall be presented, with a copy in an electronic format, within the same time period given to the State Party in responding to the questionnaire.

The Secretariat shall forward the documents that comply with the aforementioned conditions and terms before mentioned, to the State Party under review as well as to the members of the subgroup in charge of the preliminary review.

c. Present proposal documents related to the collective interest issues that the *Committee* has included in their annual working plan, in accordance with the provision in Article 36(b) of these *Rules*. These documents shall be presented, through the Secretariat, with a copy in electronic format, no later than a month before the date of the meeting in which the *Committee* shall consider these issues.

The Secretariat shall forward a copy of these documents to the lead experts via electronic mail.

Article 34. Distribution of documents from civil society organizations. The documents presented by civil society organizations, in accordance with the provisions in the previous article, shall be distributed in the language in which they were presented. Civil society organizations may, along with the document, attach a translation of it in the official languages of the *Follow-up Mechanism,* in electronic format, for distribution.

Documents presented by civil society organizations that are not in electronic format shall be distributed among the *Committee* members during the meeting only when their length is no greater than ten (10) pages. If the length is greater than 10 pages, civil society organizations shall forward enough copies to the Secretariat for distribution.

Article 35. Participation of civil society organizations in Committee meetings. The *Committee* may invite or accept the request from civil society organizations, within the framework of its meetings, to give a verbal presentation of the documents they presented in accordance with the provision in Article 33(c) of these *Rules.*

VI. COOPERATION

Article 36. Cooperation. Within the framework if its responsibilities, the *Committee* shall always take into account that the *Convention* and the *Follow-up Mechanism* have as their purposes the need to promote and strengthen cooperation among the *States Parties* for preventing, detecting, punishing and eradicating corruption.

Taking into account the previous paragraph, the *Committee*:

a. Mindful of the information it receives from the *States Parties* for its review of implementation of the measures foreseen in the *Convention* and, in its country and final reports, shall prepare specific recommendations on programs, projects and types of cooperation that will allow States to progress in those specific areas that are referred to in the reports or to search for more effective review measures.

b. In addition to the consideration and adoption of the country and final reports in accordance with the procedures prescribed in these *Rules,* shall also include the consideration of those collective interest issues related to the *Committee*'s responsibilities in trying to determine specific actions that will allow the strengthening of cooperation among them within the framework of the *Convention*.

In achieving this purpose, may invite specialists to present the results of their research or investigations in specific areas or recommend the preparation of certain studies, researches or analyses that will allow a greater number review criteria to be available for the consideration of a specific issue.

c. Based on the information received from the review of implementation of *Convention* provisions by the *States Parties* and the issues that are referred to in the previous paragraph, shall consider and prepare recommendations in regard to the areas in which technical cooperation activities; the exchange of information, experience and best practices; and the harmonization of the legislation of the *States Parties* should be facilitated to promote implementation of the *Convention* and contribute to its purposes established in Article II.

d. In accordance with Provision 7(c) of the *Report of Buenos Aires*, and mindful of the purposes of the *Follow-up Mechanism* and in the framework of the Inter-American Program for Cooperation in the Fight Against Corruption, shall strive to cooperate with all OAS Member States, taking account of activities already under way within the Organization, and shall report to the Conference of States Parties thereon.

Likewise, it shall undertake a systematic consideration of the issues involved in cooperation and assistance among *States Parties* in order to identify areas where technical cooperation is needed and the most appropriate methods for collection of useful data to review such cooperation and assistance. This work shall take into account the provisions of articles XIII through XVI and XVIII of the *Convention*.

VII. ENTRY INTO FORCE, NOTIFICATION AND AMENDMENT OF THE RULES

Article 37. Entry into force, publicity and amendment of the *Rules*. These *Rules* shall enter into force upon their adoption by the *Committee* and the *Committee* may amend these *Rules* through the consensus of the lead experts of the *Follow-up Mechanism*, or in the event that no consensus is reached, these *Rules* may be amended through a vote of two-thirds of the said lead experts present in favor of said amendment.

The Secretariat shall communicate these *Rules* to the Permanent Mission to the OAS of each State Party, and shall publish them via the *Internet* and by any other means of communication.

APPENDIX IV Methodology for Reviewing Implementation of Provisions of the Inter-American Convention Against Corruption

COMMITTEE OF EXPERTS OF THE FOLLOW-UP MECHANISM FOR IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION (1)

May 24, 2002

INTRODUCTION

The Report of Buenos Aires and the Rules of Procedure and Other Provisions of the Committee of Experts on the Mechanism for Follow-up on Implementation of the Inter-American Convention Against Corruption (hereinafter, as applicable, *Report of Buenos Aires, Rules, Committee, Mechanism* and *Convention)* provide that the *Committee* shall "devise a methodology for review of implementation of the provisions of the *Convention* selected to be reviewed in each round, designed to ensure that sufficient reliable information is obtained."

At its first meeting, held in Washington, D.C., January 14-18, 2002, the *Committee* decided that during the first round it would review implementation by States Parties of the following Convention provisions: Article III, paragraphs 1, 2, 4, 9 and 11; Article XIV, and Article XVIII.

In light of the above, this document contains the proposed methodology for the review of implementation of these provisions by States Parties. To this end, the document refers to the objective of the review in the first round, to its framework, the general and specific criteria used to guide the review, the possibility of follow-up visits, considerations with respect to the scope of the review of each of the provisions selected, source of information, the review process, and the recommendations and their followup.

I. OBJECTIVE OF THE REVIEW WITHIN THE FRAMEWORK OF THE FIRST ROUND

Within the framework of the purposes of the Convention and the Follow-up Mechanism, the objective of the review in the first round will be to conduct the follow-up of the implementation in each State Party of the selected provisions, by the review of the existence of a legal framework and of other measures for the implementation of each of the provisions and, in the case it exists, a review of State Party's results and progress.

II. FRAMEWORK FOR REVIEW

The review of the implementation of the provisions selected in the first round shall be conducted within the framework of the provisions of the Convention as well as of the Report of Buenos Aires and the Rules of the Committee.

III. CRITERIA USED TO GUIDE THE REVIEW

In addition to the principles outlined in the Report of Buenos Aires and the Rules of the Committee, information concerning the implementation of the selected provisions of the Convention by States Parties shall be reviewed based mainly on the general and specific criteria described below.

A. GENERAL CRITERIA

The following three criteria shall guide the general and comprehensive review of the implementation by the States Parties of the selected Convention provisions:

1. ***Equal treatment***

In accordance with this criterion, and as concerns the review of information on the implementation of the selected provisions of the Convention, all States Parties shall enjoy equal and consistent treatment. With a view to ensuring compliance with this criterion, in particular, the following precautionary measures shall be adopted in addition to the principles outlined in the Report of Buenos Aires and the Rules:

a) All States Parties shall be reviewed within the framework of the round and in accordance with the same criteria and procedures;
b) The questionnaire shall be the same for all States Parties; and
c) All country reports shall have the same structure.

2. ***Functional equivalency***

The Committee shall review the measures taken by the State Party to implement specific Convention provisions to determine whether those measures seek to achieve the obligations and purposes of the Convention.

In this regard, the Committee shall review the information within the specific legal context and system of each State Party and the issue of whether the measures are uniform among the various States shall not be examined, but the Committee shall appreciate the equivalency of the measures in achieving the expressed purposes.

3. **Strengthening of *cooperation***

In accordance with this criterion, the Committee shall review the information received always taking into account that the purpose of both the Convention and the Follow-up Mechanism is to promote, facilitate and strengthen cooperation among States Parties in the prevention, detection, punishment and eradication of corruption.

B. SPECIFIC CRITERIA

The implementation by a State Party of each of the selected provisions shall be reviewed based upon the following specific criteria:

1. *Level of Progress* in Convention implementation

Based on this criterion, the Committee shall review the progress made and shall identify the areas, if any, that require progress in Convention implementation.

2. *Existence* of a legal framework and/or of other measures

The Committee shall determine, based on this criterion, whether a State Party possesses a legal framework and other measures for the implementation of the respective Convention provision.

3. *Adequacy* of the legal framework and/or other measures

If a State Party possesses a legal framework and other measures for the implementation of the respective Convention provision, the Committee shall review whether they are appropriate to promote Convention purposes: to prevent, detect, punish and eradicate corruption.

4. *Results* of the legal framework and/or of other measures

As concerns this criterion, the preliminary review shall attempt to review to what extent objective results have been generated by the application of the legal framework and of other measures existing in State Party related to the implementation of a respective Convention provision.

IV. POSSIBILITY OF FOLLOW-UP VISITS

Within the framework of the first round, implementation of the selected Convention provisions will be reviewed with respect to this methodology.

Upon the conclusion of this round and to follow up on the reviewed provisions and recommendations, the Committee may undertake on-site visits by the preliminary review subgroup to all the States Parties, in the following rounds, in accordance with the provision in Article 32 of the Rules. In this case, within the methodology that is adopted in the corresponding round, the Committee shall determine the reference terms and conditions in undertaking said on-site follow-up visits.

V. CONSIDERATIONS WITH RESPECT TO THE SCOPE OF THE REVIEW OF THE PROVISIONS SELECTED WITHIN THE FRAMEWORK OF THE FIRST ROUND

For the review of the provisions selected by the Convention to be considered in the first round, the following three thematic areas will be kept in mind, as well as the considerations that are formulated in relation with some of the selected provisions.

A. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE

The first thematic area is divided into two provisions selected by the Committee for review of implementation by States Parties that establish the following:

Article III - Preventive Measures - For the purposes set forth in Article II of this Convention, the States Parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen:

1. Standards of conduct for the correct, honorable and proper fulfillment of public functions. These standards shall be intended to prevent conflicts of interest and ensure the proper conservation and use of resources entrusted to government officials in the

performance of their functions. These standards shall also establish measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions. Such measures should help preserve the public's confidence in the integrity of public servants and government processes.

2. Mechanisms to enforce these standards of conduct.

Given the close relationship between these two measures, they shall be reviewed jointly. In this regard, it should be pointed out that, in accordance with Paragraph 1 of the above-mentioned Article III of the Convention, these standards of conduct:

a) "Shall be intended to *prevent conflicts of interest*";

b) As well, shall be intended to "*ensure the proper conservation and use of resources* entrusted to government officials in the performance of their functions"; and,

c) "Shall also establish *measures and systems requiring government officials to report to appropriate authorities* acts of corruption in the performance of public functions."

Similarly, it is important to emphasize that, in accordance with Paragraph 2 of the same Article III, the mechanisms shall be designed to "*enforce* these standards of conduct."

Bearing this in mind, the review of the implementation by States Parties of the measures referred to in paragraphs 1 and 2 of Article III of the Convention shall be divided in accordance with the three topics mentioned above.

For each of these thematic areas, consideration shall be given to both the legal framework (Paragraph 1 of Article III of the Convention) and the mechanisms (paragraph 2), and the oversight bodies with respect to the selected provisions.

For the review of the standards of conduct intended to prevent conflicts of interests and of the mechanisms to enforce its compliance of these standards, it shall be taken into account whether these standards refer to the various occasions when such conflicts may arise or be observed, which are, prior to taking up the performance of public functions, during such performance and, subsequently, upon cessation of the performance of such functions.

B. SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES

The second thematic area shall be concerned with review of the third provision selected by the Committee, which establishes the following:

"Article III - Preventive Measures **-** For the purposes set forth in Article II of this Convention, the States Parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen:

(...)

"4. Systems for registering the income, assets and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such disclosures public."

For review of the implementation of this measure, consideration shall be given to the legal framework and, if they exist, the oversight bodies related to that framework.

C. OVERSIGHT BODIES

In third thematic area the review of implementation of Article III(9) of the Convention shall only address that which has to do with the other provisions of the Convention that were selected within the framework of this first round (Article III [1], [2], [4] and [11]).

D. CIVIL SOCIETY PARTICIPATION

The fourth thematic area shall refer to the review of implementation of the fifth provision chosen by the Committee, which establishes the following:

"***Article III.- Preventive Measures.-*** For the purposes set forth in Article II of this Convention, the States Parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen:
(...)

"11. Mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption."

For the purposes of the review of implementation of this provision, in addition to its consideration in general, the following mechanisms may be taken into account:

a) Mechanisms to ensure access to information. In this regard, mechanisms that regulate and facilitate the access of civil society and non-governmental organizations to information under the control of public institutions shall be reviewed, taking into account that the possibility of obtaining this information is a prerequisite for these organizations to participate in efforts to prevent corruption.

b) Consultative mechanisms. In this regard, mechanisms that enable those who perform public functions to request and receive feedback from civil society and non-governmental organizations shall be reviewed, taking into account the valuable contribution made by these consultative mechanisms in efforts to prevent corruption.

c) Mechanisms to encourage active participation in public administration. In this regard, mechanisms that permit active participation of civil society and non-governmental organizations in public policy and decision-making processes shall be reviewed, as part of the efforts to prevent corruption.

d) Participation mechanisms in the follow-up of public administration. In this regard, mechanisms that permit participation of civil society and non-governmental organizations in the follow-up of public administration shall be reviewed, in order to meet the purposes of preventing, detecting, punishing and eradicating acts of public corruption.

E. ASSISTANCE AND COOPERATION

The fifth thematic area shall refer to review of the implementation of Article XIV of the Convention in relation to mutual assistance and technical cooperation.

F. CENTRAL AUTHORITIES

The sixth thematic area shall refer to review of the implementation of Article XVIII concerning central authorities and the objectives of international cooperation and assistance provided for in the Convention.

VI. SOURCES OF INFORMATION

The review of implementation of the selected provisions shall be carried out based on the answers to the questionnaire by the respective State Party, documents presented by civil society organizations in accordance with the Rules of the Committee, and any other pertinent information that the Secretariat and members of the Committee may obtain.

VII. REVIEW PROCESS

As regards review of implementation by States Parties of selected Convention provisions, the Committee shall follow the process outlined in its Rules, in development of the Report of Buenos Aires.

VIII. COUNTRY REPORT

Comments made by the Committee in the country report shall:

a) Refer to each of the thematic areas into which the report is divided in accordance with the provisions whose implementation is being reviewed.

b) Identify areas in which the State Party has made progress in its effort to implement the Convention and, if there are any, areas in which additional progress is deemed necessary, and make recommendations to the State Party to take necessary further action.

c) Refer to those areas in that the State Party may request or receive technical cooperation or assistance, as well as to the known resources or programs in this field that can be useful for the State Party.

d) Be sufficiently detailed and specific to enable follow-up of the progress on these recommendations in accordance with the provisions of the Report of Buenos Aires, the Rules of the Committee and this methodology.

IX. DOCUMENTS

The responses of the States Parties to the questionnaire and the draft country reports shall be translated into the languages of the Committee.

In compliance with the provision in Article 27 of the Rules, it is recommended that the responses of the States Parties to the questionnaire not exceed twenty-five (25) pages, allowing each State Party to attach the necessary documents it considers appropriate, which shall be distributed in their original language. The State Party may also attach translations of said appendices into the other languages of the Committee for distribution. Likewise, it is recommended that the country reports not exceed twenty-five (25) pages.

APPENDIX V Inter-American Convention Against Corruption: Signatories and Ratifications

SIGNATORY COUNTRIES	SIGNATURE REF	RA/AC/AD REF	DEPOSIT INST	INFORMA REF
Argentina	03/29/96	08/04/97	10/09/97 RA	01/11/00 4
Bahamas (Commonwealth)	06/02/98	03/09/00	03/14/00 RA	/ /
Barbados.....	04/06/01	/ /	/ /	/ /
Belize.....	06/05/01	08/02/02	09/06/02 RA	/ /
Bolivia	03/29/96	01/23/97	02/04/97 RA	/ /
Brazil	03/29/96	07/10/02	07/24/02 RA	/ / 6
Canada	06/07/99	06/01/00	06/06/00 RA	06/06/00 5
Chile	03/29/96	09/22/98	10/27/98 RA	/ /
Colombia	03/29/96	11/25/98	01/19/99 RA	/ /
Costa Rica	03/29/96	05/09/97	06/03/97 RA	/ /
Dominican Republic	03/29/96	06/02/99	06/08/99 RA	/ /
Ecuador	03/29/96	05/26/97	06/02/97 RA	02/27/03 2
El Salvador	03/29/96	10/26/98	03/18/99 RA	/ /
Grenada.....	/ /	11/15/01	01/16/02 RA	/ /
Guatemala	06/04/96	06/12/01	07/03/01 RA	/ /
Guyana	03/29/96	12/11/00	02/15/01 RA	02/15/01
Haiti	03/29/96	/ /	/ /	/ /
Honduras	03/29/96	05/25/98	06/02/98 RA	/ / 8
Jamaica	03/29/96	03/16/01	03/30/01 RA	/ /
Mexico	03/29/96	05/27/97	06/02/97 RA	/ /
Nicaragua	03/29/96	03/17/99	05/06/99 RA	07/21/03 7
Panama	03/29/96	07/20/98	10/08/98 RA	10/08/98 3
Paraguay	03/29/96	11/29/96	01/28/97 RA	04/21/97 1
Peru	03/29/96	04/04/97	06/04/97 RA	/ /
St. Lucia.....	/ /	01/23/03	04/30/03 AD	/ /
St.Vincent & Grenadines	/ /	05/28/01	06/05/01 AD	/ /
Suriname	03/29/96	03/27/02	06/04/02 AD	/ /
Trinidad and Tobago	04/15/98	04/15/98	04/15/98 RA	/ /
United States	06/02/96	09/15/00	09/29/00 RA	09/29/00
Uruguay	03/29/96	10/28/98	12/07/98 RA	08/13/01
Venezuela	03/29/96	05/22/97	06/02/97 RA	/ /

REF = REFERENCE INST = TYPE OF INSTRUMENT D = DECLARATION

RA = RATIFICATION R = RESERVATION AC = ACCEPTANCE

INFORMA = INFORMATION REQUIRED BY THE TREATY AD = ACCESSION

Source: http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/juridico/english/fightcur.html

APPENDIX VI A Comparison of the Experiences of Argentina, Colombia and the Dominican Republic in Preparing an Independent Report

Step \ Countries	Argentina	Colombia	Dominican Republic
Definition and meeting of the NGOs that will produce the report	A coalition of NGOs was formed.	The report was produced by a single NGO.	Three groups of NGOs are doing parallel work.
Training the NGOs	Training provided by public agencies	Own resources	Training provided by USAID / Casals & Associates
Developing a work plan and agreeing on length of report	Collective task. The report covers all articles under review in the present round.	Individual task. The report focuses on a specific provision under review in the present round.	Collective task within each group. Each group prepares a report on a specific provision under review in the present round.
Collection the information (primary sources)	Response to the questionnaire, letters to government agencies, legislation, reports and polls	Response to the questionnaire, data-bases, legislation, own studies, case law	Response to the questionnaire, studies, letters to government agencies, interviews, legislation, international organizations
Processing the information	Collective task	Individual task	Partially carried out
Writing the report	Performed by a small group, approved by the plenary	Individual task	Pending
Disseminating the report	Local and before the Organization of American States	Before the Organization of American States, and local to a lesser extent	Pending