



UNODC

United Nations Office on Drugs and Crime

# PILOT REVIEW PROGRAMME



## COUNTRY REPORT

## THE PLURINATIONAL STATE OF BOLIVIA

*Review of the Implementation of Articles 5, 15, 16, 17, 25,  
46 paragraphs 9 and 13, 52 and 53 of the United Nations  
Convention against Corruption*

**Reviewing Countries:** Colombia, Netherlands

## **A. Introduction**

Article 63 of the United Nations Convention against Corruption (UNCAC) establishes a Conference of the States Parties with a mandate to, *inter alia*, promote and review the implementation of the Convention. In accordance with article 63 paragraph 7, the Conference shall establish, if it deems necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.

At its first session, held in Jordan in December 2006, the Conference of the States Parties agreed that it was necessary to establish an appropriate and effective mechanism to assist in the review of the implementation of the Convention (resolution 1/1). The Conference established an open-ended intergovernmental expert group to make recommendations to the Conference on the appropriate mechanism, which should allow the Conference to discharge fully and efficiently its mandates, in particular with respect to taking stock of States' efforts to implement the Convention. The Conference also requested the Secretariat to assist parties in their efforts to collect and provide information on their self-assessment and their analysis of implementation efforts and to report on those efforts to the Conference. In addition, several countries already during the session of the Conference expressed their readiness to support on an interim basis a review mechanism which would combine the self-assessment component with a review process supported by the Secretariat.

The "Pilot Review Programme", of which this report forms part of, was established to offer adequate opportunity to test possible means for implementation review of the Convention, with the overall objective to evaluate efficiency and effectiveness of the tested mechanism(s) and to provide to the Conference of the States Parties information on lessons learnt and experience acquired, thus enabling the Conference to make informed decisions on the establishment of the appropriate mechanism for reviewing the implementation of the Convention. The Pilot Programme is an interim measure to help fine-tune the course of action. It is strictly voluntary and limited in scope and time.

The methodology used under the Pilot Review Programme is to conduct a limited review of the implementation of UNCAC in the participating countries using a combined self-assessment / group / expert review method as possible mechanism(s) for reviewing the implementation of the Convention.

Throughout the review process, members of the Group engage with the individual country in an active dialogue, discussing preliminary findings and requesting additional information. Where requested, country visits are conducted to assist in undertaking the self-assessments and/or preparing the recommendations. The teams conducting the country visits are composed of experts from two prior agreed upon countries from the Group and a member of the Secretariat

The scope of review is articles: 5 (preventive anti-corruption policies and practices); 15 (bribery of national public officials); 16 (bribery of foreign public officials and officials of public international organizations); 17 (embezzlement, misappropriation or other diversion of property by a public official); 25 (obstruction of justice); 46 (mutual legal assistance), particularly paragraphs 13 and 9; 52 (prevention and

## **B. Process**

The following review of Bolivia's implementation of the United Nations Convention against Corruption is based on the self assessment report received from Bolivia (2/10/2007), the outcome of the active dialogue between the Bolivian authorities and the experts from Colombia and the Netherlands and the country visit conducted from 25 to 27 of May (cf. annex I-II)

## **C. Executive summary**

Bolivia has implemented a number of requirements in accordance with the eight Articles under the scope of the Pilot Review Programme.

Bolivia has taken all measures required for the full implementation of articles 5; 15 article 2; and 46 IX and XIII.

For the full implementation of the mandatory articles of the Convention under the scope of the Pilot Review Programme, the review concluded with a number of observations and recommendations. Bolivian legislation should be amended to cover the active bribery for a third as the beneficiary and the active bribery to induce conduct contrary to the bribed official's duty. Bolivia further should take measures to establish as a criminal offence the active bribery of foreign public officials and of officials of a public international organization. Bolivian criminal legislation should be amended to cover the misappropriation of funds for the benefit of another person or entity, and to foresee specific criminal offences in accordance with article 25. Bolivia should enhance its definition of PEPs to cover their family members and associates (article 52 para. 1), and take measures to ensure that the responsible institutions notify, where appropriate, financial institutions of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny. Bolivian legislation should further be amended to permit Bolivian courts to order those who have committed corruption offences to pay compensation or damages to another States Party that has been harmed by such offences, and to permit Bolivian courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with the Convention.

With regard to the fight against corruption in general, and the implementation of the non-mandatory provisions of the Convention under the scope of the pilot programme, the review team made the following recommendations: Bolivia should consider establishing as a criminal offence the passive bribery of foreign public officials or officials of a public international organization. The review team noted the deep concern of Bolivian authorities about the frequency with which investigators, prosecutors and judges working on corruption cases had been subject to threats and violence. Bolivia should consider enhancing security measures for their protection. The review team further noted that Bolivian authorities considered experience in international cooperation cases very limited. The review team encourages the Bolivian authorities to consider whether the Criminal Code should be amended in order to clarify that no dual criminality requirements are applied, and to train the judiciary on international cooperation in criminal matters. The review team further encourages Bolivian authorities to strengthen the country's asset declaration system.

## **D. Implementation of the United Nations Convention against Corruption**

### **1. Ratification of the Convention**

The Plurinational State of Bolivia (hereinafter: Bolivia) signed the Convention on 9 Dec 2003, and ratified the Convention, in accordance with art. 59 No. 12 of the Constitution of 1967 (as amended in 2002, 2004 and 2005) through Law No. 3068 on 1 June 2005.

Bolivia deposited its ratification instrument with the Secretary-General of the United Nations on 5 December 2005.

### **1. Convention and Constitution**

Bolivia adopted a new Constitution on 25 January 2009 by referendum with 61,4% approval (38,6% voted against the Constitution). On 7 February 2009 President Evo Morales enacted the new Constitution. The Constitution had been elaborated by the Constituent Assembly (*Asamblea Constituyente*) since 6 August 2006.

With regard to international treaties, No 9 of the transitory provisions of the Constitution of 2009 foresees that international treaties that were ratified before the entry into force of the Constitution and do not contradict the Constitution remain part of the domestic legal order, with the rank of domestic law. This states that the new Constitution is the law applicable to all international treaties, regardless of the date of ratification, and determines their respective status.

Article 13, IV of the Constitution of 2009 states that international treaties and agreements which will be ratified by the Plurinational Legislative Assembly (which will be first established after the elections on 6 December 2009), recognize human rights and do not allow limitations to them in state of emergency, will range above the domestic laws.

Treaties are therefore self-executing and part of the legal order by ratification, ranging above domestic law (for treaties ratified after establishment of the Plurinational Legislative Assembly) or at the same level (for treaties ratified before its establishment, such as UNCAC).

The Constitution of 2009 addresses the fight against corruption in a number of provisions:

Article 8 spells out the “ethic-moral principles of plural society” and creates an obligation for the State to actively promote those principles. Prominently among them feature the three basic values “ama qhilla, ama llulla, ama suwa” (do not be lazy, do not lie and do not steal), and the value of transparency. Transparency of public administration is guaranteed in art. 232; control of public administration and the provisions on the use of public funds in art. 93, 241, 242 and 309; transparency in fiscal and financial matters in art. 323; and the citizen’s right to access to information in Article 21 para. 6.

Article 108 makes it a constitutional duty for Bolivian citizens to report and combat acts of corruption. Article 28 foresees the loss of political rights for persons who embezzle public resources; Article 115 states that statute of limitations will not apply to corruption offences (the same applies to claims for economic damage caused to the State, art. 324). Article 123 states the general non-retroactivity of laws, but states an exception for matters of corruption, “for the investigation, adjudication and sanctions of offences committed by public civil servants against the interests of State”.

The Constitution further confirms the existence of the Comptroller-General’s Office (*Contraloría General del Estado*) and creates the State Attorney’s Office (*Procuraduría*) (art. 213, 229 and 231). Supreme Decree No. 29894 regulates the new organization of the executive power.

## **2. The Criminal Procedure**

The Bolivian criminal process follows the accusatory approach in which the investigation is conducted by the prosecutor, supported by the National Police and the Institute for Forensic Investigation and under the control of a judge (art. 69, 277, 279).

In the preliminary phase the report/allegation of criminal conduct is investigated by the prosecutor and brought to the attention of the judge (*juez de instrucción*, who acts, notwithstanding his name, not as investigating but as guarantee judge); the suspect has to be notified. The preliminary phase must by law not take more than five days, however, the authorities indicated that this requirement

was only fulfilled in a relatively small part of cases. Prosecution is mandatory (some exceptions in Art. 21 No. 1-5).

When the prosecutor sees grounds to proceed, he issues the imputation (art. 302), which marks the beginning of the investigation phase. It links a certain suspect to a specific alleged conduct and gives way to cautionary measures. Cautionary measures such as detention on remand or freezing or seizure of assets need a judicial decision, requested by the prosecutor (art. 233, 235). Undercover operations are only foreseen for drug offences (art. 284). For some offences, the public action must be brought additionally by the victim as a party (*in parte*). The public action ceases when the conduct took place in an indigenous community and the communitarian justice has resolved the case according to indigenous law (art. 28). The investigation phase must by law be concluded in 6 months, which can be extended. The investigation stage is concluded when the prosecutor presents the accusation to the court (art. 323).

The trial phase is oral, public, adversarial (*contradictorio*) and continuous, i.e., shall not be suspended for more than three days (art. 329). The court comprises professional and lay judges with regard to all offences. The sentence cannot go beyond the accusation. The whole process must not take longer than three years, by sanction of extinction of the process.

Some offences are to be prosecuted in a private action by the victim as a plaintiff (*querellante*), in which case the prosecutor does not take part in the case (art. 18, art. 72-82, art. 290-292); among the offences to be prosecuted by private action is a specific type of competition fraud (*corrupción de dependientes*) and undue appropriation of goods. Bolivian criminal procedure law further gives the victim the possibility to open a civil process within the criminal procedure for the reparation of damages, which is conducted by the prosecutor and in which the evidence of the criminal case can be used (*acción civil*, art. 36-41, *reparación de danos*, art. 382-388).

From 2004 to 2009, under the Integrated Anti-corruption Programme (*Programa Integral Anti-corrupción, PIA*), supported by international donors (Denmark, the Netherlands and Sweden), anti-corruption teams were established comprising prosecutors (*Ministerio Público*), analysts (*Unidad de Investigaciones Financieras*), Auditors (*Contraloría General del Estado*) and representatives of the (Vice) Ministry for Institutional Transparency and Fight against Corruption, in order to enhance cooperation and prioritize actions in selected cases. 45 cases were initiated, in particular against high level officials, which are now in different stages of the criminal procedure. Participants in the PIA programme receive specific training.

### **3. Institutional Framework**

#### **Ministry of Institutional Transparency and Fight against Corruption – Ministerio de Transparencia Institucional y Lucha contra la Corrupción (MTLCC)**

Supreme Decree Nr. 29894 of 7 February 2009 established the Ministry of Institutional Transparency and Fight against Corruption.

Bolivia established for the first time in 2006 a dedicated institution for anti-corruption and transparency policy, the Vice Ministry of Transparency and Fight against Corruption under the Ministry of Justice. Before 2006, there was no standing institution but a time-limited anti-corruption delegation reporting to the President, financed primarily by international cooperation funds (*Delegación Anticorrupción Presidencial*).

Within the structure of the Ministry and directly reporting to the Minister, two Vice Ministries hold separate responsibilities:

The Vice Ministry for Corruption Prevention and Promotion of Ethics and Transparency is responsible for the formulation and execution of policies, programs and projects; the development of draft legislation, the facilitation of coordination between governmental bodies at all levels, the promotion of the participation of civil society, the facilitation of access to information on public administration and expenditure and the compliance with international anti-corruption conventions and agreements. The Vice Ministry developed the three major draft anti-corruption laws (*Proyecto de Ley de Lucha contra la Corrupción, Enriquecimiento Ilícito e Investigaciones de Fortunas, Marcelo Quiroga Santa Cruz* (cf. below art. 5), *Anteproyecto de Ley de Recuperación de Bienes Ilícitamente Obtenidos*, and *Proyecto de Ley de Transparencia y Acceso a la Información Pública*, cf. below art. 5).

The Vice Ministry for the Fight against Corruption receives oral and written complaints by citizens, including anonymously. When receiving a complaint, it undertakes a preliminary inquiry within 5 days. If the inquiry concludes that the complaint refers to a corruption offence and it could possibly have merit in a criminal or disciplinary process, the Vice Ministry transfers the complaint to the prosecutor, resp. to the institution exercising disciplinary power. In the process of the inquiry, the Vice Ministry can request information from the suspect and other entities such as the civil registry; however, it does not have coercive investigation powers and can not lift the banking or tax secrecy. Once the Vice Ministry has transferred a report of corruption to the prosecutor, it follows up on and monitors the processes initiated, in order to enhance the full application of procedural law. The Vice-Ministry for the Fight against Corruption has no standing in the criminal process; it can only act as a *parte civil* in proceedings for the reparation of damage (article 26, lit. q of Supreme Decree No. 29894 from 7 February 2009) (if those are not brought by the directly affected public agency, in which case the Vice Ministry provides support to them).

The Ministry has currently round 70 officials. The funds assigned to the institution by the national budget cover only 40% of the budget and are complemented by funds obtained through international cooperation (60%). The Bolivian territory consists of nine departments; the Ministry has currently a presence in five of them, with a view to establishing offices in all departments.

#### **Prosecutor's Office - Ministerio Público**

According to articles 225-228 of the Constitution, the Prosecutor's Office has the responsibility to defend the interests of society, to exercise the criminal action and to strategically lead and control the legality of police action during investigations. Its competences are established in the respective Organic Law (Law No. 2175) and the Criminal Procedure Code. Since the State Attorney's Office is not operational yet, the Prosecutor's Office has also a number of competences in investigations that may result in civil or disciplinary sanctions.

The Forensic Investigation Institute (*Instituto de Investigaciones Forenses - IDIF*) is part of the prosecutor's office and responsible for all technical and scientific aspects of investigations, such as genetic and ballistic investigations.

Within the Prosecutor's Office, a General Inspectorate (*Inspectoría General del Ministerio Público*), exercises internal control over the actions of the prosecutors and follows up on reports and complaints of citizens on alleged misconduct of prosecutors.

There are 3 specialized anti-corruption prosecutors at the district prosecutor's offices in La Paz and a limited number of further specialized prosecutors in some of the departments; it is being considered to increase this number. Further, there are three prosecutors in La Paz participating in the PIA programme (cf. above).

#### **Magistrates' Council – Consejo de la Magistratura**

Created by law No. 1817/1997 as *Consejo de la Judicatura* and renamed through the new Constitution, the Magistrates' Council is the administrative and disciplinary organ of the judiciary. Law 1817/1997 contains types of misconduct by judges, such as the requesting of bribes or the misuse of influence, and foresees a number of disciplinary sanctions for them. The Constitutional Court declared article 53 of the same law, which regulated the possibility of removal (*destitución*) of judges from office as a sanction for serious misconduct, as unconstitutional (Sentence 011-99). The Judiciary does not have specialized anti-corruption judges.

#### **Financial Investigations Unit - Unidad de Investigaciones Financieras (UIF)**

The Financial Investigations Unit, created by Law 1768 of 10 March 1997 (Art. 185; further regulation in Decree 24771) and operational since 1999, is a body of administrative investigation. It holds functional, administrative and operational autonomy in the organizational structure of the Authority for the Supervision of the Financial System (*Autoridad de Supervisión del Sistema Financiero, ASFI*). before 2009: Superintendence for Banks and Financial Entities). It receives, requests, analyzes and transmits information on the laundering of illicit funds. Investigations are conducted in three occasions: 1) by report of suspicions of criminal conduct by a public entity, 2) by request of the prosecutor, and 3) by suspicious transaction report by an obliged institution (STR).

According to article 3 of Decree 24771, obliged institutions are financial intermediary and auxiliary services, intermediary services in the stock market and insurances and the related intermediary and auxiliary services. Circular 4/2008 issued by the UIF clarifies the concept of auxiliary services to include services such as exchange houses and cash transports.

The FIU can lift the banking secrecy without judicial order and has access to register and tax information. After a STR, the FIU can order to hold the transaction for 48 hours. If this deadline is to be extended, a judicial order is required. The report of the FIU is used by the prosecutor for the imputation; later, officials of the FIU are heard as witnesses.

The FIU is composed of a director, who is designated for five years, and a specialized technical team of 30 auditors, lawyers, accountants, IT experts and other specialized staff.

The FIU used to be an active member of the Egmont Group; membership is currently suspended because Bolivia has not adopted legal provisions against terrorism financing.

#### **Comptroller-General's Office – Contraloría General del Estado**

The Comptroller-General's Office was established by Law Nr. 1178 and Supreme Decree No. 23215 of 22 July 1992 to increase transparency in the public administration and to promote responsibility among civil servants. The body conducts auditing in all areas of the public sector, including legislative and judicial bodies. Further, it receives and keeps the asset declarations of all public officials, issues basic norms on the internal and external governmental control system, promotes the establishment of accountancy and internal control systems, evaluates the efficacy of the internal control systems throughout the public sector, and carries out training programs. The Comptroller-General's Office has round 600 staff and has, besides the central office in La Paz, departmental offices in the nine departments.

#### **State Attorney - Procuraduría General del Estado**

This office is to be established according to article 229-231 of the Constitution as the organ defending the interests of the State by representing the State judicially and extra judicially, initiating

judicial action, in particular in civil and disciplinary matters. It will support the prosecutors' office in the judicial action on cases of offences against the public patrimony.<sup>1</sup>

#### **The Ombudsman – Defensor de Pueblo**

The Ombudsman, whose office was established through Law No. 1818/1997 and confirmed by article 218-222 of the Constitution, has the competence to watch over the promotion, enforcement, dissemination and defense of individual and collective guarantees and rights by the public administration. It can, inter alia, request information from all public entities and issue recommendations.

#### **National Tax Service – Servicio de Impuestos Nacionales**

The National Tax Office is an autonomous body under the Treasury Department. Its functions include the collection, auditing, determination and levy of taxes, as well as the application and imposition of sanctions for tax offences.

#### **Bolivian National Customs Office - Aduana Nacional Boliviana**

The National Customs Office is an autarkic entity established by Law No. 1990 from 1999. Its competence is the control of the flows of goods and cash at the borders.

#### **Ethics Commissions of the Congress – Comisiones de Ética del Órgano Legislativo**

The Ethics Commissions of the Congress investigate and issue reports on misconduct of parliamentarians, which are discussed in the plenary of the respective Chamber.

#### **Internal Audit Units of Public Entities - Unidades de Auditoría Interna de las Entidades Públicas**

Also established by Law Nr. 1178, the internal audit units exercise the internal control and evaluation of the administrative system and the activities, operations, results and procedures realized or utilized by public officials in the exercise of their functions. The specialized internal auditing units are not allowed to participate in any administrative operation or action that is not directly linked to their functions. All auditing reports have to be directly submitted to the highest executive authority of the respective body and to the Comptroller-General.

#### **Transparency Units of the Ministries – Unidades de Transparencia de los Ministerios**

Pursuant to D. S. No. 29894/2009, initiated by the Vice Ministry for Corruption Prevention and Promotion of Ethics and Transparency (MTLCC), all Ministries are obliged to establish a transparency unit which secures access to information to the public, promotes ethics, develops mechanisms for the participation of civil society and watches over the implementation of accountability obligations of their entity. It is suggested that these units be staffed with 4 persons each. The Vice-Ministry supports and monitors the establishment of the units. By May 2009, 14 out of 20 Ministries had established transparency units.

#### **Vigilance Committees – Comités de Vigilancia**

Through these committees, established by the Law on people participation No. 1551/1994 and strengthened by Law 2235/2000 (Law for National Dialogue), the territorial basis organizations defined in the same law have the mandate to exercise control over local administration. The Committees consist of one representative of each basis organization per local administration. The mandate of the Committees is to control the fair and correct administration and investment of municipal funds of popular participation. They are also responsible for supporting the planning, formulation and reformulation of the Annual Operative Plan and the Municipal Development Plan,

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<sup>1</sup> The installations of the Procuraduría General del Estado were inaugurated in El Alto on 16 August 2009. The Procuraduría will be operational in 2010 (information additionally provided by the Government of Bolivia after the country visit).

evaluating the compliance with policies, plans and municipal programs on a half year basis and exercising control over all the resources administered by the municipality.

#### **4. Further multilateral anti-corruption treaties**

Further to the United Nations Convention against Corruption, Bolivia ratified the Inter-American Convention against Corruption on 29 March 1996 and deposited its instrument of ratification on 4 February 1997. Bolivia also signed the declaration for follow-up of implementation of the Inter-American Convention against Corruption on 4 June 2001.

Bolivia concluded the first review of implementation round on 29 July 2004 and the second round on 28 June 2007.

In the first round, it was recommended

- to strengthen the implementation of laws and regulatory systems concerning conflicts of interest by, inter alia, strengthening the restrictions for those who leave public sector employment and setting a legally binding time period for public entities to adopt and implement their Codes of Ethics.
- to strengthen the implementation of statutes and regulatory systems with respect to control over the resources of the public administration, by adopting Codes of Ethic and monitoring their implementation.
- to strengthen existing mechanisms for reporting acts of corruption by government officials, as well as, inter alia, include the obligation to report among the duties of every public official and adopt and implement protection measures for whistleblowers.
- to strengthen the systems for registration of income, assets and liabilities by, inter alia, classifying illicit enrichment as a crime and strengthening the provisions on the verification of asset declarations by the Comptroller-General.
- to strengthen the high-level oversight organs, to ensure the efficacy of such oversight, endowing them with the resources, political and social support and establishing mechanisms that facilitate the institutional coordination of their actions and ongoing evaluation and monitoring of them.
- to strengthen the mechanisms for ensuring access to public information.
- to complement existing mechanisms of public consultation, in particular prior to designing public policies and prior to the final adoption of legal provisions.
- to strengthen mechanisms that encourage civil society and nongovernmental organizations to participate in the conduct or public affairs
- to strengthen measures to encourage civil society and nongovernmental organizations to participate in the follow-up of public administration; and
- to determine and prioritize technical cooperation needs and requests for mutual assistance for investigating or judging cases of corruption.

In the second round, it was recommended

- to strengthen the systems for hiring public servants by, inter alia, strengthening the provisions related to the stages of the processes of recruitment, adopt clearer and more specific provisions on hiring both public servants and temporary personnel and by making sure that the corresponding authority adopts provisions aimed at preventing and punishing nepotism in public service.
- to strengthen the systems for government procurement of goods and services, to continue strengthening the lead agency Sistema de Administración de Bienes y Servicios (SABS), strengthen the mechanisms of control in procurement processes, and to continue strengthening the electronic media and information systems for government procurement.
- to implement systems to protect public servants and private citizens who, in good faith, report acts of corruption, including keeping their identity.

- to adopt or expand the criminal legislation, amend the second paragraph of Article 172 of the Criminal Code, which exempts those who aid and abet their ascendants, descendants, or spouse from punishment for concealment, and amend Article 132 of the Criminal Code to require a minimum of two (instead of four) persons for a criminal association.

Bolivia is further a Member of the Andean community and of the Andean Plan for the Fight against Corruption (Decisión 668 - *Plan Andino de Lucha contra la Corrupción*). The Andean Plan was adopted in Tarija, Bolivia in 2007.

## 5. Review of implementation of selected articles

### 5.1. Article 5

#### ***Preventive anti-corruption policies and practices***

“1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

“2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

“3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

“4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.”

#### a. Summary of the main requirements

In accordance with article 5, States Parties are required: (a) To develop and implement or maintain effective anti-corruption policies that encourage the participation of society, reflect the rule of law and promote sound and transparent administration of public affairs (para. 1); and (b) To collaborate with each other and relevant international and regional bodies for the pursuit of the above goals (para. 4). Article 5 does not introduce specific legislative requirements, but rather mandates the commitment of States Parties to develop and maintain a wide range of measures and policies for the prevention of corruption, in accordance with the fundamental principles of their legal system. Under article 5, paragraph 1, the requirement is to develop, implement and maintain effective, coordinated measures that: (a) promote the participation of the wider society in anti-corruption activities; and (b) reflect the principles of: (i) the rule of law; (ii) proper management of public affairs and public property; (iii) integrity; (iv) transparency; and (v) accountability. These general aims are to be pursued through a range of mandatory and optional measures outlined in subsequent articles of the Convention. Article 5, paragraph 4, requires that, in the pursuit of these aims, as well as of general prevention and evaluation of implemented anti-corruption measures, States Parties collaborate with each other as well as with relevant international and regional organizations, as appropriate and in accordance with their fundamental principles of law.

#### b. Findings and observations of the review team concerning article 5

### National Policy

The National Policy for Transparency and Fight against Corruption (*Política Nacional de Transparencia y Lucha contra la Corrupción*) has been developed by the (then: Vice-) Ministry for Transparency and Fight against Corruption in December 2007, on the basis of the National Development Plan (*Plan Nacional de Desarrollo*, Decreto Supremo 29272) which proclaims zero tolerance against corruption and impunity, transparency and continuous social control. The National Policy covers the public and the private sectors, civil society, the media and social organizations. It was formally adopted by Supreme Decree No. 214 on 22 July 2009.<sup>2</sup>

The Anti-Corruption Policy was developed in a consultative process with civil society and social organizations, taking into account national and international documents including UNCAC. The policy focuses on the following areas of action: Citizen participation and accountability (auditing, social control and capacity-building to this effect), transparency and access to information, as well as the actual fight against corruption (criminalization, prevention and asset recovery), strengthening of institutions that contribute to the fight against corruption and enhanced coordination between them.

### Draft legislation

The draft anti-corruption law (*Ley de Lucha contra la Corrupción, Enriquecimiento ilícito e investigación de fortunas "Marcelo Quiroga Santa Cruz"*) was approved by the Chamber of Deputies but did not find a majority in the Chamber of Senators. The government announced, however, that it will further pursue to enact it under the new Constitution. The draft contains regulations on, inter alia,

- institutions responsible for the fight against corruption: creation of a National Anti-Corruption Commission (comprising the Ministry for the Fight against Corruption, Ministry of Interior, Prosecutor's Office, Comptroller-General, UIF, Ombudsman, Anti-Corruption Council); creation of the Ministry for the Fight against Corruption and Illicit Enrichment; Creation of the National Council for Fight against Corruption and Illicit Enrichment; creation of specialized anti-corruption prosecutors and investigation units in the national police; creation of the Financial and Patrimony Intelligence Unit; and abolishment of the predecessors of these institutions; strengthening of the follow-up to the asset declarations by the Comptroller-General's Office (*Subsistema de Control*).
- natural and legal persons obliged to comply with the requirements set up by the Financial and Patrimony Intelligence Unit, exceptions from the banking secrecy and whistle-blower protection
- amendments to the Criminal Code: lighter sanctions for those who participate in corruption offences and later report or cooperate with law enforcement; immediate seizure and freezing of assets; abolishment of the statute of limitations; amendment to criminal offences: illicit use of public goods and services; illicit enrichment; favouring of illicit enrichment; active transnational bribery; obstruction of justice; money-laundering;
- amendments to the Criminal Procedure Code: abolishment of the statute of limitations but maximum investigation time of 18 months; asset recovery abroad.

The Draft Law on Transparency and Access of Information to Public Information contains regulations on

- the establishment of the function of an information official in all public entities
- the creation of information access portals and their minimum content
- the right of access to information, and
- the process of providing access to information.

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<sup>2</sup> Information additionally provided by the Government of Bolivia after the country visit.

The review team underlines the importance of this legislation for the prevention of corruption and encourages the Bolivian government to continue its efforts to align its legislation with the Convention.

Further draft laws under development by the Ministry include a non-conviction based forfeiture law (*Ley de Extinción de Dominio*) and a law on civil society participation.

#### Civil society participation in the prevention of corruption

A number of civil society organizations actively participate in enhancing transparency and in the fight against corruption. In accordance with the central importance and the major competences given by the new Constitution to the participation of civil society and social movements, the Ministry of Institutional Transparency and Fight against Corruption cooperates with 35 civil society organizations and social movements in the fight against corruption. By way of example, it concluded a Memorandum of Understanding with the Chamber of Construction (Cámara Boliviana de Construcción), under which the Chamber publishes detailed information on the public construction contracts, from the bidding process to the execution of the contract (SIMOP – Sistema de Información y Monitoreo de Obras Públicas). Other civil society organizations and social movements work to enhance the social control of public institutions. They conduct audits of public investments, projects and institutions, including institutions at the national level such as the Central Bank. Another form of civil society participation are the vigilance committees (cf. above). Organizations further work for enhancing the reporting on corruption incidents to the competent institutions. Organizations highlighted during the country visit that access to information is a key aspect that decides on the success on their work, and that they need to invest in training and capacity-building of citizens who can fulfil the complex tasks. Another form of social control recognized by law is the “mechanism of social control” (Law of National Dialogue, No 2235 of 2000), which enables civil society to supervise and evaluate the impact of public policies.

#### Further measures

Based on the Anti-Corruption Policy, the Ministry for Transparency and the Fight against Corruption elaborated a programme for transparency in public administration. It comprises modules on access to information, public ethics (capacity-building, development of Ethics Codes), accountability and social control (programme for the promotion of participation of social actors). Further, it developed curricula for education in ethics and the fight against corruption for public civil servants, civil society and the broader public. In 2007, the (then-Vice) Ministry for Transparency and Fight against Corruption concluded pilot agreements with five public entities for the implementation of exemplary measures for transparency, access to information, accountability and development of Ethics Codes. The programme was expanded in 2008 to comprise 46 entities.

The establishment of transparency units in the Ministries (cf. above) is supported by the Ministry for Transparency and Fight against Corruption, through, inter alia, the development of model regulations for such entities.

The Ministry for Transparency and Fight against Corruption runs a project on measuring of levels of transparency in the administration of public entities and elaborating a base line, an index and a ranking on transparency and the determination of risk areas.

Bolivia applies, pursuant to D.S. 25874/2000, an Integrated Administration System SIGMA (Sistema Integrado de Gestión y Modernización Administrativa), which comprises systems for budget, treasury accountability, public credit, procurement and HR. The country further applies an Integrated Accounting System (Sistema de Contabilidad Integrada, SCI) and a System for the Administration of Goods and Services (Sistema de Administración de Bienes y Servicios – SABS).

Bolivia further applies an on-line Public Procurement Information System SICOES (Sistema de Informaciones de las Contrataciones Estatales) for making the procurement process transparent. In this system, all invitations to bidding and contracting processes are registered and published for public access. The site contains information on, inter alia, contractual proceedings, bidding requests, concluding of contracts on goods, works, general services and consultancies. Further instruments for the administration of public contracts include models for offers and requests, forms, budgets, process statistics etc.

Bolivia has adopted the measures required in accordance with UNCAC Article 5 and is encouraged to continue developing policies and legislation for the prevention of corruption.

### 3.2 Article 15

#### ***Bribery of national public officials***

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

“(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

“(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.”

#### **a. Summary of the main requirements**

In accordance with article 15, States Parties must establish two offences: active and passive bribery of national public officials:

States Parties must establish as a criminal offence, when committed intentionally, the promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties (art. 15, subparagraph (a))<sup>3</sup>. The required elements of this offence are those of promising, offering or actually giving something to a public official. The offence must cover instances where no gift or other tangible item is offered. Thus, an undue advantage may be something tangible or intangible, whether pecuniary or non-pecuniary. The undue advantage does not have to be given immediately or directly to a public official of the State. It may be promised, offered or given directly or indirectly. A gift, concession or other advantage may be given to some other person, such as a relative or political organization. Some national legislation might cover the promise and offer under provisions regarding the attempt to commit bribery. When this is not the case, it will be necessary to specifically cover promising (which implies an agreement between the bribe giver and the bribe taker) and offering (which does not imply the agreement of the prospective bribe taker). The undue advantage or bribe must be linked to the official’s duties.

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<sup>3</sup> It is reiterated that for the purposes of the Convention, with the exception of some measures under chapter II, “public official” is defined in article 2, subparagraph (a). An interpretative note indicates that, for the purpose of defining “public official”, each State party shall determine who is a member of the categories mentioned in subparagraph (a) (i) of article 2 and how each of those categories is applied (A/58/422/Add.1, para. 4).

States Parties must establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties (art.15, subpara. (b)). This offence is the passive version of the first offence. The required elements are soliciting or accepting the bribe. The link with the influence on official conduct must also be established. As with the previous offence, the undue advantage may be for the official or some other person or entity. The solicitation or acceptance must be by the public official or through an intermediary, that is, directly or indirectly. The mental or subjective element is only that of intending to solicit or accept the undue advantage for the purpose of altering one's conduct in the course of official duties<sup>4</sup>.

**b. Findings and observations of the review team concerning article 15**

*Active Bribery*

Article 158 of the Penal Code establishes as a criminal offence the active bribery committed by a public official. The article states that any person who gives or promises, directly or through an intermediary, a gift or any other benefit to a public official or authority to induce him to execute or omit an act with respect to their functions (*relativo a sus funciones*) shall be punished with the penalty established for passive bribery (deprivation of liberty for 2-6 years and fine), reduced by one third.

Article 158 further states that any private person who has responded at an occasion (*ocasionalmente*) to the solicitation of a gift or advantage required by an authority or public official but reported these incidents to the competent authority before the initiation of the criminal proceedings, will not be punished.

Article 158 covers the promise, offering or giving of an advantage for the official himself, but does not explicitly cover the promise, offering or giving of an advantage "for another person or entity".

Further, article 158 covers only bribery in order to induce a conduct "with respect to their [the public official's] functions". A comparison with article 145 (passive bribery) shows that this article explicitly covers bribery to induce conduct "with respect to their [the public official's] functions or ... contrary to the duties of their office (*relativo a sus funciones o contrario a los deberes de su cargo*). The Bolivian authorities held that, on the basis of the comparative interpretation of the two articles, it is at least questionable whether active bribery to induce a conduct contrary to the duties of the office of the bribed official was covered by article 158. No jurisprudence has been issued yet on this question.

*Passive Bribery*

Article 145 of the Penal Code establishes as an offence the passive bribery committed by a public official.

Article 145 states that any public official or authority who receives, for himself or for another person, directly or through an intermediary, a gift or any other advantage, or who accepts such offers or promises, for an act with regard to their functions or for an act contrary to the duties of their office (*relativo a sus funciones o contrario a los deberes de su cargo*), shall be punished with two to six

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<sup>4</sup> See art. 28, which provides that "Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances"

years of imprisonment and a fine calculated on the daily rate of income ranging from thirty to one hundred days.

Article 147 establishes as a criminal offence the acceptance of gifts or other benefits by a public official “in consideration of their office”.

Bolivia has adopted some of the measures required in accordance with UNCAC Article 15 I; however, the active bribery for a third as the beneficiary and the active bribery to induce conduct contrary to the bribed official’s duty are not covered.  
Bolivia has adopted all measures required in accordance with UNCAC Article 15 II.

### 3.3 Article 16

***Bribery of foreign public officials and officials of public international organizations***

“1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

“2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.”

**a. Summary of the main requirements**

Under article 16, paragraph 1, States must establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business. Article 16 does not require that bribery of foreign public officials constitute an offence under the domestic law of the concerned foreign country.<sup>5</sup>

Article 16, paragraph 2, requires that States Parties consider establishing as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in

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<sup>5</sup> As noted in chapter I of the Convention against Corruption, “foreign public official” is defined as “any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise” (art. 2, subpara. (b)). The “foreign country” can be any other country, that is, it does not have to be a State party. State parties’ domestic legislation must cover the definition of “foreign public official” given in article 2, subparagraph (b) of the Convention, as it would not be adequate to consider that foreign public officials are public officials as defined under the legislation of the foreign country concerned. An official of a public international organization is defined as “an international civil servant or any person who is authorized by such an organization to act on behalf of that organization” (art. 2, subpara. (c)).

the exercise of his or her official duties. This is the mirror provision of article 15, subparagraph (b), which mandates the criminalization of passive bribery of national public officials.

**b. Findings and observations of the review team concerning article 16**

**(1) Bribery of foreign public officials**

Bolivian criminal law does not contain a provision on the bribery of foreign public officials.

Transnational bribery is foreseen as a criminal offence in art. 22 of the Draft Ley Marcelo Quiroga Santa Cruz anti-corruption law.

**(2) Bribery of officials of public international organizations**

Bolivian criminal law does not contain a provision for the implementation of this non-mandatory provision of the Convention.

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| Bolivia has not adopted the measures required in accordance with UNCAC Article 16. |
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**3.4 Article 17**

***Embezzlement, misappropriation or other diversion of property by a public official***

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.”

**a. Summary of the main requirements**

States Parties must establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position. The required elements of the offence are the embezzlement, misappropriation or other diversion<sup>6</sup> by public officials of items of value entrusted to them by virtue of their position. The offence must cover instances where these acts are for the benefit of the public officials or another person or entity. The items of value include any property, public or private funds or securities or any other thing of value. This article does not “require the prosecution of de minimis offences” (A/58/422/Add.1, para. 29).

**b. Findings and observations of the review team concerning article 17**

Article 144, entitled “Embezzlement” states that any public official who applies funds he administers, has been entrusted with or has in custody, for another purpose than they had been intended for, will

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<sup>6</sup> The term “diversion” is understood in some States to be distinct from “embezzlement” and “misappropriation”, while in others “diversion” is intended to be covered by or is synonymous with those terms (A/58/422/Add.1, para. 30).

be punished with one month to one year of imprisonment or a fine calculated on the daily rate of income ranging from twenty to two hundred days.

Article 142, entitled “misappropriation” states that any public official who uses his functions to appropriate money, assets or goods which he is appointed to administer, levy or safeguard, shall be liable to imprisonment for three to eight years and a fine calculated on the daily rate of income ranging from sixty to two hundred days.

Article 143, entitled “culpable misappropriation” states that any public official who negligently allows the perpetration of such an offence will be punished with one month to one year of work and a fine calculated on the daily rate of income ranging from twenty to fifty days.

If the act harms or hampers the work of the civil service, the penalty shall be increased by one third.

These provisions cover most of the requirements met in article 17 UNCAC and are in some cases even broad (i.e. in article 144, which criminalizes the use of funds for other purposes than the intended). However, they do not explicitly cover the misappropriation of funds “for the benefit of another person or entity”.

Bolivian authorities stated that while most of the cases are covered by the relevant provisions of the Criminal Code, their application in practice remains challenging: Due to the relatively lenient sanctions in the law, defendants can request conditional release, which is granted when the sanction is not higher than 3 years of deprivation of liberty and the defendant had not been convicted before.

Bolivia has adopted most of the measures required in accordance with UNCAC Article 17, although the misappropriation of funds “for the benefit of another person or entity” is not covered.

### 3.5 Article 25

#### ***Obstruction of justice***

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

“(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

“(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.”

#### **a. Summary of the main requirements**

Under article 25, States must criminalize the use of inducement, threats or force in order to interfere with witnesses and officials whose role would be to produce accurate evidence and testimony. The first offence relates to efforts to influence potential witnesses and others in a position to provide the authorities with relevant evidence. States Parties are required to criminalize the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in proceedings in relation to the commission of offences established in accordance with the Convention (art. 25(a)).

The obligation is to criminalize the use both of corrupt means, such as bribery, and of coercive means, such as the use or threat of violence.

**b. Findings and observations of the review team concerning article 25(a) and (b)**

***(1) Use of inducement, threats or force to interfere with witnesses or officials***

Article 294 establishes as a criminal offence the coercion of another person to act, omit or tolerate something by violence or serious threats, with a sanction from six months to two years of imprisonment.

Article 169 of the Penal Code penalizes false testimony as a result of bribery with imprisonment for one to fifteen months, increased by one third. In Bolivian criminal law, the instigator suffers the same sanction as the perpetrator of the main offence (art. 22 Penal Code).

Many cases referred to in article 25 of the Convention can be covered by a combination of these three provisions. However, they do not cover the specific link between the method (physical force, threats or intimidation or bribes) and the objective (induce false testimony or interfere in the giving of testimony or the production of evidence), corresponding with an appropriate sanction.

***(2) Interference with actions of judicial or law enforcement officials***

Article 294 establishes a general coercion provision, criminalizing the coercion of another person to act, omit do or tolerate something by violence or serious threats, with a sanction from six months to two years of imprisonment.

Article 161 foresees criminal sanctions for those who impede or obstruct the action of a public official, with imprisonment from one month to one year.

While these provisions may cover some of the cases addressed in article 25 UNCAC – and even go further in some aspects, i.e. covering obstruction of actions of all public officials, not only justice and law enforcement officials - , they do not take into account the specific link between the method (physical force, threats or intimidation) and the objective (to interfere with the exercise of official duties) of the interference, corresponding with an appropriate sanction.

The Bolivian authorities expressed their deep concern about the frequency in which investigators, prosecutors and judges working on corruption cases had been subject to threats and violence. A number of authorities informed the review team on threats and violence against them or of publicly known cases, and of the lack of adequate security measures for their protection.

**(3) Both article 25 para.s 1 and 2:**

The draft “Ley Marcelo Quiroga Santa Cruz” includes an article 177 bis in the Penal Code which foresees punishment for those who “by the use of physical force, threats, intimidation, promises, offering or giving of an undue advantage to induce a person to interfere with the presentation or production of evidence in a proceeding with regard to offences linked with corruption, money-laundering and economic and financial crime”. This text is close to the wording from art. 25 I UNCAC, only differing in the following: instead of “to induce false testimony OR the production of evidence...” it uses “to induce a person to interfere with the presentation or production of evidence”.

Further, it foresees punishment for those who “through the use of physical force, threats or intimidation interfere with the functions of officials and judges, prosecutors and police, or with an organ of prevention with regard to the commission of offences linked to corruption, money-

laundering and economic and financial crime". The wording of this draft law is a very close adaptation of the wording of article 25 paragraph 2 UNCAC.

Bolivian authorities stated that while a number of cases are covered by the relevant provisions of the Criminal Code, their application in practice remains challenging: Due to the relatively lenient sanctions in the law, defendants can request conditional release, which is granted when the sanction is not higher than 3 years of deprivation of liberty and the defendant had not been convicted before.

While Bolivian criminal law has provisions which cover a number of the cases addressed in UNCAC Article 25, it does not contain specific provisions in accordance with UNCAC Article 25.

### 3.6 Article 46

#### ***Mutual legal assistance***

"1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

" ... "

"9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

"(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

"(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

" ... "

"13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central Authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

" ... "

**a. Summary of the main requirements**

The Convention against Corruption requires States Parties: (a) To ensure the widest measure of mutual legal assistance for the purposes listed in article 46, paragraph 3, in investigations, prosecutions, judicial proceedings and asset confiscation and recovery in relation to corruption offences (art. 46, para. 1); (b) To provide for mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to offences for which a legal entity may be held liable under article 26 (art. 46, para. 2); (c) To ensure that mutual legal assistance is not refused by it on the grounds of bank secrecy (art. 46, para. 8); (d) To apply paragraphs 9 to 29 of article 46 to govern the modalities of mutual legal assistance in the absence of a mutual legal assistance treaty with another State party (art. 46, para. 7)

Article 46, paragraph 9, allows for the extension of mutual legal assistance in the absence of dual criminality, in pursuit of the goals of the Convention, including asset recovery. An important novelty is that States Parties are required to render assistance if non-coercive measures are involved, even when dual criminality is absent, where consistent with the basic concepts of their legal system (art. 46, para. 9 (b)). An example of such a measure even in the absence of dual criminality is the exchange of information regarding the offence of bribery of foreign officials or officials of international organizations, when such cooperation is essential to bring corrupt officials to justice (see the interpretative note contained in document A/58/422/Add.1, para. 26, relating to art. 16, para. 2, of the Convention). Further, the Convention invites States Parties to consider adopting measures as necessary to enable them to provide a wider scope of assistance pursuant to article 46 even in the absence of dual criminality (art. 46, para. 9 (c)). States Parties need to review carefully existing laws, requirements and practice regarding dual criminality in mutual assistance. In some instances, new legislation may be required.

The UNCAC requires the designation of a central authority with the power to receive and execute or transmit mutual legal assistance requests to the competent authorities to handle it in each State party. The competent authorities may be different at different stages of the proceedings for which mutual legal assistance is requested. Article 46, paras. 13 and 14 requires States Parties to notify the Secretary-General of the United Nations of their central authority designated for the purpose of article 46, as well as of the language(s) acceptable to them in this regard.

**b. Findings and observations of the review team concerning article 46**

Article 46 para. 9: Mutual legal assistance is regulated in art. 138-148 of the Criminal Procedure Code, which states the obligation to provide the widest possible measure of mutual legal assistance . This regulation does not mention dual criminality requirements.

According to the Bolivian authorities, experience in international cooperation in criminal matters, both on the requesting and on the requested side, is limited to a small number of cases; it was not known that mutual legal assistance had been rejected on grounds of dual criminality requirements.

While the Bolivian legal system fulfils all requirements of article 46 para. 9, the review team encourages the Bolivian authorities to consider whether the Criminal Code should be amended in order to clarify that no dual criminality requirements are applied.

UNCAC Article 46 para. 13: The central authority designated by Bolivia is the Ministry for Foreign Affairs. Bolivia has notified the Secretary-General upon ratification of the Convention.

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| Bolivia has adopted the measures required in accordance with UNCAC Article 46 para. 9 and 13. |
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**3.7 Article 52**

***Prevention and detection of transfers of proceeds of crime***

“1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

“2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

“(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

“(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

“3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

“4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

“5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

“6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.”

**a. Summary of the main requirements**

Without prejudice to article 14, States Parties are required to take necessary measures, in accordance with their domestic law, to oblige financial institutions within their jurisdiction: (a) To verify the identity of customers; (b) To take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts; and (c) To conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. These provisions must be seen in the context of the more general regulatory and supervisory regime they must establish against money-laundering, in which customer identification, record-keeping and reporting requirements feature prominently

In order to facilitate implementation of these measures, States Parties, in accordance with their domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, are required: (a) To issue advisories regarding the types of natural or legal person to whose accounts financial institutions within their jurisdiction will be expected to apply enhanced scrutiny; the types of accounts and transactions to which particular attention should be paid; and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; (b) Where appropriate, to notify financial institutions within their jurisdiction, at the request of another State party or on their own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify; (c) Ensure that financial institutions maintain adequate records of accounts and transactions involving the persons mentioned in paragraph 1 of article 52, including information on the identity of the customer and the beneficial owner; and (d) Prevent the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group.

States Parties are also required to consider: (a) Establishing financial disclosure systems for appropriate public officials and appropriate sanctions for non-compliance; (b) Permitting their competent authorities to share that information with authorities in other States parties when necessary to investigate, claim and recover proceeds of corruption offences; (c) Requiring appropriate public officials with an interest in or control over a financial account in a foreign country: (i) To report that relationship to appropriate authorities; (ii) To maintain appropriate records related to such accounts; (iii) To provide for sanctions for non-compliance.

States Parties may also wish to consider requiring financial institutions to: (a) To refuse to enter into or continue a correspondent banking relationship with banks that have no physical presence and that are not affiliated with a regulated financial group; and (b) To guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

**b. Findings and observations of the review team concerning article 52**

**Article 52 Paragraph 1**

Article 26 of Decree 24771 establishes the obligation of obliged subjects to register and verify through credible measures the identity, activity and residence of their clients when entering into a commercial relationship. Instruction UIF/016/99 by the FIU (“Instruction and Proceedings on the Prevention, Detection and Report of Legitimation of Illicit Gains in the Financial System and Auxiliary Services”) provides details on this obligation (further details in instructions adopted by UIF/032/99 for financial intermediaries, UIF/009/01 for insurances and UIF-0024/00 for “*entidades de valores*”).

If the client does not act for their own benefit, the obliged subject must verify the identity of the beneficial owners of an account to be opened or a transaction to be conducted, especially for those legal persons which do not conduct commercial, financial or industrial operations in the place where they are registered Art. 26 of D.S. 24771). Article 27 foresees the obligation to request further information on a transaction that seems not to have an economic legitimation.

Instruction UIF/001/2008 binds obliged subjects to develop PEPs lists, have appropriate risk management systems for PEPs accounts in place, leave the approval of contracts with PEPs to the higher hierarchical levels within the institution, make reasonable efforts to establish the origin of funds and apply permanent enhanced scrutiny to PEPs.

#### **Article 52 Paragraph 2(a)**

As described, the FIU provided in its Instruction UIF/016/99 guidelines on enhanced scrutiny on accounts of PEPs. UIF/001/2008 contains a general definition of PEPs: those officials (elected, designated and freely nominated) that serve in executive positions in the public sector and manage resources (No. 2). No. 3 broadens the concept of PEPs to other Publically Exposed Persons such as scientists, artists etc. who have achieved a certain public fame. However, the families and associates of PEPs are not covered by this definition, and the development of PEP lists is left to the management of the individual banks.

#### **Article 52 Paragraph 2(b)**

The FIU uses for its own operations public lists such as World Check and gives small banks access to them upon requests; it stands further ready when financial institutions have questions on the identification of PEPs. However, the development of PEPs lists is left to the management of the individual bank, and the FIU does not proactively notify them of persons to whose accounts enhanced scrutiny should be applied.

#### **Article 52 Paragraph 3**

Art. 29 of D. S. 24771 establishes the obligation to preserve archives for 10 years.

#### **Article 52 Paragraph 4**

Article 5 of the Law on Banks and Financial Institutions (Law No. 1488) states that banks and financial institutions require to be authorized by the Authority for the Supervision of the Financial System. Foreign banks need to assign and deposit a certain minimal capital in the country (art. 17 No. 4), and are required to establish a sufficiently authorized legal representation in the country (article 20). With regard to domestic banks, article 11 states the prerequisites, including the deposit of ten per cent of the minimal capital (art. 11 No. 7).

#### **Article 52 Paragraph 5 and 6**

All Bolivian public officials have to submit asset declarations “before, during and after” their term of office (article 235 No. 3 Constitution). The declarations are submitted by each public official personally to the Comptroller-General’s Office, generally once a year (teachers once every five years), although the intervals are not regulated in the respective legislation. A summary of the declarations is published at the web page of the Comptroller-General’s office.

Bolivian authorities indicated that the process was cumbersome and that reforms were discussed how to make it more viable by reducing the categories of public officials obliged to declare, and/or the number of occasions at which they had to declare. Further, the competence for the collection of asset declarations is under discussion: Supreme Decree No. 29894 has transferred the competence to the Ministry of Work, Employment and Public Welfare; however, no steps for the transition have been taken yet.

The declarations can only be used in a proceeding or even verified by order of a judge, prosecutor or the FIU in the course of their investigations or judgment.

The review team encourages the Government of Bolivia to enhance reforms with regard to the obligation to declare and the use of the declaration and to proceed to the effective use and control of such declarations.

Bolivia has adopted most of the measures required in accordance with UNCAC Article 52, although the definition of PEPs does not cover their family members and associates (article 52 para. 1), and notifications according to article 52 para. 2 (b) are not carried out.

### 3.8 Article 53

***“Measures for direct recovery of property***

“Each State Party shall, in accordance with its domestic law:

“(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

“(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

“(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party’s claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.”

#### a. Summary of the main requirements

Article 53 requires States Parties: (a) To permit another State party to initiate civil action in its courts to establish title to or ownership of property acquired through corruption offences (subpara. (a)); (b) To permit their courts to order corruption offenders to pay compensation or damages to another State party that has been harmed by such offences (subpara. (b)); (c) To permit their courts or competent authorities, when having to decide on confiscation, to recognize another State party’s claim as a legitimate owner of property acquired through the commission of a corruption offence (subpara. (c)). The implementation of these provisions may require legislation or amendments to civil

procedures, or jurisdictional and administrative rules to ensure that there are no obstacles to these measures. Article 53 focuses on States Parties having a legal regime allowing another State party to initiate civil litigation for asset recovery or to intervene or appear in domestic proceedings to enforce their claim for compensation.

**b. Findings and observations of the review team concerning article 53**

**Article 53(a)**

The Civil Procedure Code gives all persons, nationals or foreigners and natural or legal persons the right to initiate civil procedures. According to the Constitution, foreign and national persons have the same rights (art. 13 IV, V, VI).

**Article 53(b) and (c)**

Bolivian law does not contain regulations with regard to article 53 (b) and (c).

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| Bolivia has adopted the measures required in accordance with UNCAC Article 53 (a); it has not adopted the measures required in accordance with UNCAC Article 53 (b) and (c). |
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**4. Overall findings of the review team concerning the implementation of the relevant Convention articles**

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| <p><b>Article 5:</b> Bolivia has adopted the measures required in accordance with UNCAC Article 5 and is encouraged to continue developing policies and legislation for the prevention of corruption.</p> |
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| <p><b>Article 15:</b> Bolivia has adopted some of the measures required in accordance with UNCAC Article 15 I; however, the active bribery for a third as the beneficiary and the active bribery to induce conduct contrary to the bribed official's duty are not covered.</p> |
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| <p>Bolivia has adopted all measures required in accordance with UNCAC Article 15 II.</p> |
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| <p><b>Article 16:</b> Bolivia has not adopted the measures required in accordance with UNCAC Article 16.</p> |
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| <p><b>Article 17:</b> Bolivia has adopted most of the measures required in accordance with UNCAC Article 17, although the misappropriation of funds "for the benefit of another person or entity" is not covered.</p> |
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| <p><b>Article 25:</b> While Bolivian criminal law has provisions which cover a number of the cases addressed in UNCAC Article 25, it does not contain specific provisions in accordance with UNCAC Article 25.</p> |
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| <p><b>Article 46:</b> Bolivia has adopted the measures required in accordance with UNCAC Article 46 para. 9 and 13.</p> |
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| <p><b>Article 52:</b> Bolivia has adopted most of the measures required in accordance with UNCAC Article 52, although the definition of PEPs does not cover their family members and associates (article 52 para. 1), and notifications according to article 52 para. 2 (b) are not carried out.</p> |
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| <p><b>Article 53:</b> Bolivia has adopted the measures required in accordance with UNCAC Article 53 (a); it has not adopted the measures required in accordance with UNCAC Article 53 (b) and (c).</p> |
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**5. Recommendations on the basis of the findings of the review process**

The review team notes that Bolivia is in a highly dynamic process of change towards the institutional organization of the Plurinational State, and that institutions are presenting or working on numerous draft anti-corruption laws, such as the Law "Marcelo Quiroga Santa Cruz". The review team highlights the importance of this process and encourages Bolivia to advance in its fight against corruption.

**Recommendations with regard to the implementation of mandatory provisions of the Convention**

**Article 15:** Bolivian criminal legislation on active bribery should be amended to cover the active bribery for a third as the beneficiary and the active bribery to induce conduct contrary to the bribed official's duty.

**Article 16 paragraph 1:** Bolivia should take measures to establish as a criminal offence the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

**Article 17:** Bolivian criminal legislation on misappropriation of funds should be amended to cover the misappropriation of funds "for the benefit of another person or entity".

**Article 25:** While Bolivian criminal law contains provisions which cover a number of the cases addressed in this article of the Convention, Bolivia should take measures to establish specific criminal offences in accordance with article 25.

**Article 52:** Bolivia should enhance its definition of PEPs to cover their family members and associates (article 52 para. 1), and take measures to ensure that the responsible institutions notify, where appropriate, financial institutions at the request of another States Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny.

**Article 53:** Bolivian legislation should be amended to permit Bolivian courts to order those who have committed corruption offences to pay compensation or damages to another States Party that has been harmed by such offences, and to permit Bolivian courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with the Convention.

#### **Recommendations with regard to the implementation of non-mandatory provisions of the Convention, and generally on the fight against corruption**

**Article 16 paragraph 2:** Bolivia should consider establishing as a criminal offence the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

**Article 25:** The review team noted the deep concern of Bolivian authorities about the frequency with which investigators, prosecutors and judges working on corruption cases had been subject to threats and violence. Bolivia should consider enhancing security measures for their protection.

**Article 49 paragraph 9:** The review team noted that Bolivian authorities considered experience in international cooperation cases very limited. The review team encourages the Bolivian authorities to consider whether the Criminal Code should be amended in order to clarify that no dual criminality requirements are applied, and to train the judiciary on international cooperation in criminal matters.

**Article 52:** While Bolivia has an asset declaration system, the review team encourages Bolivian authorities to strengthen the system of collecting, processing and use of information for the detecting of possible corruption cases.

#### **6. Elements of an action plan formulated in cooperation with the Government of Bolivia on the basis of the recommendations**

##### **(a) Legislative action**

1.- Review and, where appropriate, adjust existing draft legislation in accordance with the provisions of the Convention, particularly its provisions on the criminalization of corruption.

2.- Develop and adopt the necessary regulations on PEPS, in accordance with the relevant articles of the Convention.

3.- Develop and adopt the necessary legislation which allows for the full implementation of article 53 (b) and (c) of the Convention.

**(b) Institucional strengthening**

1.- Implement and, where appropriate, develop and adopt the necessary regulations for a strategy for the protection of witnesses, whistle-blowers, experts, investigators and judges.

2.- Develop and strengthen the institutional capacity for international cooperation and assistance in criminal matters with regard to corruption and the recovery of the proceeds of corruption.

3.- Strengthen and, where necessary, restructure the system of asset declarations.

## **Annex I: Calendar of events**

### **Self-assessment checklist:**

- Bolivia submits self-assessment checklist (15/8/07)
- Secretariat sends self-assessment report to experts (19/6/2008)
- Secretariat sends English language of self-assessment report to experts (11/8/2008)

### **Dialogue:**

- Videoconference held with the Bolivian Ministry, the Permanent Mission of Bolivia and UNODC office in La Paz (23/06/2008)
- Colombia sends questions to Bolivia (19/9/2008)
- Netherlands sends questions to Bolivia (3/10/2008)
- Trilateral meeting held in Vienna, where (a) Bolivia agreed to provide additional information, as requested by Colombia and the Netherlands before 10 November, (b) a tele/videoconference is to be held after 9 December, and (c) a country visit is to be scheduled for early 2009 (20/10/2008)
- Bolivia responds to Netherlands questions (10/12/2008)
- Colombia submits supplemental questions (28/1/2009)
- Teleconference held where agreed country visit will be one of two last weeks of May, and that Bolivia will forward laws and articles of laws in response to questions (26/2/2009)
- Bolivia sends laws and clarifications (2/3/2009)
- Bolivia sends additional laws and answers questions from Colombia (10/3/2009)
- Bolivia sends additional laws and answers questions from the Netherlands (12/3/2009)
- 6/7 April 2009 trilateral meetings held: Bolivia to send revised agenda and country visit to be held during the week of 25-29 May 2009.
- Trilateral meeting held: Comments by experts by 10 September (24/8/2009)  
Secretariat forwards revised country report (25/9/2009)

### **Country visit:**

- Bolivia confirms 25-29 May 2009 as dates for country visit (16/3/2009)
- Bolivia sends agenda (3/4/2009)
- Country visit conducted (25-29/5/2009)

**Annex II:**  
**Country visit - List of mission participants and agenda**

Colombia:

Rafael Quintero Cubides, First Secretary, Ministry of Foreign Affairs  
Mónica Rueda Rodríguez, Assessor, Presidential Programme for Modernization, Efficiency, Transparency and Fight against Corruption

UNODC:

Brigitte Strobel-Shaw, Crime Prevention and Criminal Justice Officer, Corruption and Economic Crime Section, Division for Treaty Affairs  
Dorothee Gottwald, Associate Expert, Corruption and Economic Crime Section, Division for Treaty Affairs

25.05.09

9:30-12:30

Meeting with the Minister and the Vice Ministers of Institutional Transparency and Fight against Corruption

Meeting with directors and officials of the Ministry of Institutional Transparency and Fight against Corruption

15:00-17:30

Meeting with the Director of the Financial Investigations Unit  
Meeting with staff of the Financial Intelligence Unit

17:30-18:30

Meeting with the District Prosecutor of La Paz

26.05.09

10:30-12:00

Meeting with the President of the District Court of La Paz and his staff

15:00-16:00

Meeting with the Comptroller-General  
Meeting with staff of the Comptroller-General's Office

27.05.09

9:00-10:00

Meeting with civil society organizations and social movements

- CABOCO (Cámara Boliviana de la Construcción)
- CSTUB (Confederación Sindical Única de Trabajadores Campesinos de Bolivia)
- CONAMAQ (Consejo Nacional de Ayllus y Marcas del Kollasuyo)
- Federación Nacional de Mujeres Bartolina Sisa

10:00-11:00

Meeting with the National Tax Office – Entity of the Transparency Programme

11:00-12:00

Meeting with the Central Bank of Bolivia - Entity of the Transparency Programme