



UNITED NATIONS
Office on Drugs and Crime

PILOT REVIEW PROGRAMME:



*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: Argentina and Norway

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 detection of transfers of proceeds of crime); and 53 (measures for direct recovery of property)

B. Process

The following review of Peru's implementation of the United Nations Convention against Corruption is based on the self-assessment report received from Peru on 15 August 2007, the outcome of the active dialogue between the experts, and an on-site visit from 16 to 18 January 2008 (schedule of events, programme and participants of the country visit cf. annex II to IV).

C. Executive summary and overall findings of the review team concerning the implementation of the relevant Convention articles by Peru

a. Legislative and Regulatory Framework

Peru's legislative framework has largely implemented the requirements in accordance with the eight Articles under the scope of the Pilot Review Programme.

Peru's statutory and regulatory system fully complies with the requirements of Articles 5 regarding the implementation of preventive measures.

Peru has also partially complied with the requirements of Article 15 of the Convention to criminalize bribery, except for the fact that its laws do not expressly cover benefits provided to third parties and political parties linked to corrupt officials. (Though as discussed above, Peru's accomplice and conspiracy laws would cover many of such situations.) However, Peru has not complied yet with the requirement of Article 16 to criminalize the active bribery of foreign and international public officials, nor has it fulfilled the optional requirement to criminalize the passive bribery of such officials.

Peru has fully complied with the requirements of Article 17 to criminalize embezzlement and misappropriation. Peru has partially complied with Article 25 regarding the criminalization of obstruction of justice, except that its laws do not appear to cover coercion against judicial and law enforcement officials.

Peru's legislation also meets the requirements of Article 46 paragraph 9 to allow for non coercive mutual legal assistance even in an absence of dual criminality and Peru has also complied with Article 46 paragraph 13 to have a centralized agency designated to receive mutual legal assistance requests under the Convention.

Overall, Peru's legislation has also fully complied with Article 52 and its requirements regarding the prevention and detection of transfers of proceeds and crimes and other provisions. Peru's legal framework also appears to have partially complied with the requirements of Article 53 to allow measures for direct recovery of property by other States Parties, though additional information in this area would be beneficial.

b. Implementation

Peru has implemented the requirements of Article 5 regarding preventive activities through a wide-ranging system of preventive measures and bodies. However this will be further enhanced through the adoption of the national anti-corruption strategy currently under development. Peru's implementation of preventive activities will benefit from more clarity regarding the roles of the various preventive institutions. Peru's implementation would also be improved by increased financial, technical and organizational support, including to the police, prosecution and judiciary.

Peru's implementation of the requirements of Article 15 to criminalize bribery has also been good, with many prosecutions of bribery cases. Its implementation could be improved by revising its bribery statutory framework to eliminate the delineations between bribery with or without connection to the violation of the public official's duties.

Peru has fully implemented Article 17 of the Convention, and has prosecuted many embezzlement and misappropriation cases. However, Peru's implementation of Article 25 of the Convention, criminalizing obstruction of justice, would benefit from further development. Its main legislative tool, Article 409-A of the Penal Code has only recently been enacted. Moreover, there were two recent cases identified to the reviewers were threats and violence against judges, though apparently well-supported by evidence, nevertheless resulted in acquittals due to issues involving the judiciary's interpretation and implementation of the law.

While Peru does allow for non-coercive mutual legal assistance in the absence of dual criminality, this apparently has not occurred on a regular basis and has not been fully implemented. Peru's stringent banking secrecy laws have also impacted Peru's implementation of Article 46(9).

Overall, Peru's implementation of the prevention, detection, and reporting requirements of Article 52 has also been good. However, it was noted by several sources that Peru's implementation efforts were hampered by deficiencies in its issuance of specific corruption-based advisories to financial institutions. It was further noted that its "sworn statement" asset disclosure system was a cumbersome process with many ambiguous requirements. Implementation is also hindered by Peru's tradition of a large informal sector of the economy, which is totally outside the regulated financial institutional sector.

Peru also has a good history of implementing measures for direct recovery of property as required by Article 53 of the Convention. In particular, Peru has been proactive in recovering its own property lost to corruption and transferred abroad. However, some officials noted that Peru does not have a robust history of assisting other countries recover property transferred into Peru, and that this area of cooperation was not well developed in practice.

c) Summary findings and proposed actions by the review team with regard to mandatory requirements of the Convention

The review team considers the following actions should be taken by Peru in order to meet mandatory requirements of the Convention:

Summary findings Article 15:

Peru has adopted most of the measures required in accordance with Article 15, although the Penal Code does not expressly cover gifts or benefits given to a third party.

- i) Revise the bribery statutes to expressly cover indirect benefits provided to third parties linked to corrupt public officials (art. 397, active bribery).

Summary findings Article 16:

Peru has not adopted the measures required in accordance with Article 16.

- ii) Draft, adopt and implement a law criminalizing the active bribery of foreign and international public officials.

Summary findings Article 25:

Peru has adopted most of the measures required in accordance with Article 25, although it appears that coercion against judicial and law enforcement officers is not covered in the Penal Code.

- iii) Revise the statutory framework, and increase capacity-building training, to ensure that obstruction of justice involving threats and assaults on judicial and law enforcement officers can be properly prosecuted.

Summary findings Article 53:

Peru may require further legislation or amendments to civil procedures, or jurisdictional and administrative rules, to ensure it has adopted all the measures required in accordance with Article 53.

- iv) Further refine the legislative framework and operational aspects of the regulations to allow measures for direct recovery of property by other States Parties.

D. Implementation of the United Nations Convention against Corruption

1. Ratification of the Convention

Peru signed the United Nations Convention against Corruption at the High Level Conference in Mérida on 10 December 2003.

The ratification of treaties by the President is subject to prior approval by the Congress in the case they touch upon human rights, the nation's sovereignty, dominion, or territorial integrity, in case national defense and financial obligations of the government are concerned, or in case they modify, or eliminate taxes, modify or

derogate any law, or require legislative measures for their application (Art. 56 of the Constitution).

The Congress approved the ratification of the Convention by law Legislative Resolution No. 28357 of 6 October 2004.

President Toledo ratified the Convention by Supreme Decree 075-2004-RE of 19 October 2004 (published 20 October 2004) and deposited the ratification instrument in New York on 16 November 2004.

2. General observations on the Peruvian legal system

Article 55 of Peru's Constitution states that "treaties concluded by the government and now in effect are part of national law." The United Nations Convention against Corruption was concluded by the Peruvian government and entered into effect with its ratification by the President; it is therefore part of the Peruvian national law. However, some legislation may be necessary for the full application and implementation of the Convention.

Since ex-President Alberto Fujimori resigned in 2000, the country has experienced a rapid and thorough transition process. Since the Paniagua and Toledo governments, a number of reforms have been initiated and are being pursued further. The experience of deep-rooted systemic corruption during the Fujimori era has not only led to a number of high-profile cases, including asset recovery cases and the criminal accusation of Fujimori and other high officers of his regime, but also efforts and initiatives to rebuild the legal and institutional system based on values of participation, transparency and integrity. The government paid special attention to the institutional structures for the fight against corruption, creating various bodies and responsibilities for the prevention and prosecution of this crime.

The latest major institutional decision has been the attribution in 2008 of the main national coordinating role on anti-corruption to the Secretariat for Public Administration of the Prime Minister's office, which replaces in that function the National Anti-Corruption Office.¹

Peru is further undertaking a thorough reform of its Criminal Procedural Code. The Criminal Procedural Code of 1940 (Law No. 9024 of 16 January 1940), which was still in force when the Fujimori era ended, had only undergone a partial reform in 1991 (Decreto Legislativo 638 of 27 April 1991). In 2003, a High Level Commission was initiated by Supreme Decree No. 005-2003-JUS of 14 March 2003 for the elaboration of a new Code and the development for a plan for its entry into force. The new Code was adopted by Legislative Decree No. 957 of 29 July 2004, following Law N° 28269 of 04 July 2004. The Code is being introduced gradually, beginning with the judicial districts of Huaura and La Libertad in 2006 and completing the application of the new Code in the judicial district of Lima in 2011 (Calendar adopted by Supreme Decree N° 013-2005-JUS of 8 October 2005).

¹ Measures and Initiatives taken by the Peruvian Government after January 2008 have not been object of the country visit and are reported on the basis of information provided by the Peruvian authorities.

In October 2008, the new President of the Council of Ministers, Mr. Yehude Simons Munaro, has expressed the decision of the government to accelerate the application of the new Code which aims at reducing the delays in the administration of justice, among other virtues.

According to the Procedural Code of 1940, the criminal process was initiated by the instruction phase (*instrucción*), in which the investigating judge (*juez instructor*) investigates the case. Further to the investigating judge, the prosecutor's office (*Ministerio Público*, composed of *Fiscalías*) and the defence (Public Defender's Office) take part in the instruction phase, while the *Procuraduría*, which is responsible for the legal representation of the State before the Courts, can take part as joint plaintiff (*parte civil*). The instruction phase is in writing and non public and ends with the resolution of the investigating judge whether or not the judgment phase will be initiated. The judgment phase (*juicio*) is led by the judge, with participation of the prosecutor's office, the defence and the joint plaintiff as appropriate. It is oral and public and ends with the judgment (*sentencia*).

The main focus of the reform is to carry out the shift towards a fully accusatorial system, with the main principles of the separation of investigation and judgment, the concentration of responsibility for prosecution in the hands of the prosecutor, the responsibility of the prosecutor to initiate the process by accusation, the restriction of the judge to the content of the accusation, the principles of contradiction, equality and oral negotiation.

It must be indicated also that the recently appointed President of the Council of Ministers has been mandated by the President of the Republic to place the fight against corruption as a central axis of the general government policies, with explicit reference to the international obligations undertaken by Peru as State party to the United Nations Convention against Corruption and the Interamerican Convention against Corruption.

For that purpose, Prime Minister Simons presented on 15 November 2008 to the National Agreement Forum (Foro del Acuerdo Nacional, the high-level instance for dialogue and consultation between government, political parties, private sector and civil society organizations) draft versions of the National Plan for the Prevention and Fight against Corruption, which has been opened for recommendations until the end of 2008, in view of its subsequent adoption.

3. Review of implementation of selected articles

3.1. 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,

1. Preventive Strategy and Institutions

Peru has comprehensive anti-corruption measures in place that seek to reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. While Peru has yet to finalize and issue a national anti corruption plan, as indicated above, the country has taken concrete steps to implement specific measures against corruption. The reviewers noted that Peru has made commendable and open efforts to prevent corruption and that the Peruvian government is very committed to the fight against corruption.

a. *Presidency of the Council of Ministers*²

The Secretariat for Public Administration of the Presidency of the Council of Ministers has been attributed, by Supreme Decree N°057-2008-PCM, the responsibility to promote mechanisms for transparency, access to information, ethics and public vigilance in the administration of the State agencies. It replaces, in these functions, the activities of the former National Office for Anticorruption.

This decision has been taken to place the anti-corruption policies and activities at a higher administrative level and to link such activities with the more general process of State reform fostered by the Peruvian government, which is also a responsibility of the Secretariat for Public Administration.

The Secretariat will have, among its main anti-corruption tasks, the development of technical assistance programs for State agencies - in order to help them in the adequate application of legal norms on transparency and the fight against corruption -, as well as the monitoring of the activities to be carried out in the framework of the soon to be adopted National Plan for Anticorruption.

b. *Contraloría / Comptroller-General*

The Comptroller-General of the Republic ("*Contraloría*") has an important role in the prevention and control of corruption. It operates the National System of Oversight and Methodological Guidance to monitor the execution of contracts for the provision of goods and services and the award of works contracts and concessions. The Comptroller-General has oversight control of over 4,200 governmental entities. Of these entities, 200 have additionally their own internal control agencies reporting to the Comptroller-General.

Within its four general strategic objectives to take active part in the fight against corruption, its "control" strategy is aimed at securing national implementation of the UNCAC. This control strategy encompasses three types of controls (a) preventive, (b) investigative, and (c) assessment and sanctions. In order to take rapid action whenever possible, the Comptroller-General works directly with the police and the governmental agency at issue with necessary supporting documentation. This approach has proved very effective in concrete cases and substantially reduced time for investigation.

c. *Prosecution, Police, and Judiciary*

The Ministry of Justice and the Office of the Attorney General also play a key role in preventive and other anti-corruption efforts in Peru. The Ministry of Justice operates an anti-corruption website and also conducts public awareness raising activities. Beyond these programmes, Peru has created decentralized anti-corruption Procuradurías (*Procuradurías Públicas Anticorrupción descentralizadas*) for the representation of the State's interests and legal proceedings in cases conducted

² Measures and Initiatives taken by the Peruvian Government after January 2008 have not been object of the country visit and are reported on the basis of information provided by the Peruvian authorities.

regionally relating to the fight against corruption in the public administration, and specialized prosecutors offices (*Fiscalías Especializadas en delitos de corrupción de funcionarios*). Separate from these offices, Peru also created a special Office of the Ad Hoc Prosecutor to prosecute former President Alberto Fujimori and former Intelligence Chief Vladimiro Montesinos on corruption and other charges.

Within its judiciary, Peru also operates special Anti-Corruption Courts. The Peruvian National Police also have a special Anti-Corruption Division. Beyond these general anti-corruption judicial activities, the reviewers noted the success in securing and repatriating assets in the Fujimori/Montesinos cases and that when properly supported the capabilities of law enforcement and the prosecution are excellent.

The reviewers also noted that on more routine anti-corruption cases prosecutors often work in one-man circuits, without sufficient support, which hampers the possibility of effective and qualitatively adequate investigation and prosecution. The reviewers identified an urgent need for modernizing the prosecution service by creating multidisciplinary units, upgrading technological tools and securing prosecutorial autonomy. It was further noted that due to this lack of training and support, prosecutors rarely seek confiscation of criminal proceeds or instruments in complex crime prosecutions, even when available.

There were also difficulties noted in recruiting and retaining well trained professionals and that possibilities of in-house training were very limited. (Similarly, the police also suffer from recruitment problems related to low salaries and low prestige.) It was noted that only 17% of registered cases in the provinces were prosecuted, and only about one-third of cases prosecuted resulted in convictions. It was further conveyed to the reviewers by several sources that there is a public perception that some members of law enforcement agencies, the prosecution service, and, in particular, the judiciary may have themselves been compromised by corruption.

d. *Other Preventive Bodies*

The fight against corruption is further supported by a Financial Intelligence Unit, which operates within the Inspectorate of Banking, Insurance and Private Pension Funds (SBS). Both the SBS and its FIU conduct their own extensive preventive efforts involving the monitoring and reporting of suspicious transactions.

As an important part of Peru's public and private assets are based on the mining and other extractive industries, the Ministry of Energy and Mines coordinates an Extractive Industries Transparency Initiative (EITI), which seeks to prevent corruption in this key economic sector.

In addition, the Higher Council on State Contracts and Procurement (CONSUCODE) monitors the awarding and implementation of procurement and contracting activities, and forwards any suspicions of corrupt activities to the Comptroller-General. Procurement activities are also covered by a detailed legal regime through the Government Procurement Law, as well as the Electronic System of Procurement and Contracting for Peru (SEACE), which serves as an open and transparent computerized procurement system. In addition, all levels of government use the

Integrated System for Public Financial Management (SIAF-SP) system to integrate budgeting, treasury and accounting functions.

Finally, pursuant to several ministerial resolutions the Ministry of Education also provides specialized ethics and anti-corruption training for students at the primary and secondary levels of education. In an attempt to institutionalize anti-corruption awareness the Ministry of Education also operates a National Education Development Fund (FONDEP) that addresses issues of corruption within the Ministry and, in addition, operates its own Anti-Corruption High Tribunal.

2. Preventive Measures Involving Freedom of Information and Public Participation

As will be discussed in more detail in the section on Article 52 *infra*, there are several legal measures requiring the reporting of earned and unearned income by public officials and employees of the state. The Commission on Reports and Complaints (CADER) publishes this information. Peru has also developed a National Register of Punitive Severance and Dismissal that makes public information regarding public officials punished for corruption or other acts of misfeasance.

Peru also encourages public participation in and knowledge of the activities of government officials through citizens' oversight boards and public anti-corruption hotlines operating in many public agencies and, more directly, through the Citizens' Watch system supporting the anti-corruption activities of the Office of the Comptroller-General. Peru also has a functioning and well-utilized Freedom of Information Act through its 2003 Law for Transparency and Access to Public Information.

3. Preventive Measures Regarding Government Personnel

Peru has laws in place for the prevention of nepotism and the corrupt hiring of family members or friends of public officials. These provisions are primarily encapsulated through the Public Employment Framework Law, though there are numerous specific laws and regulations as well. Peru also has a detailed legal regime covering conflicts of interest and has adopted a general Code of Ethics of the Civil Service which covers all government officials at the state, regional, and local level. Several agencies and bodies have also adopted their own specific Codes of Ethics.³

To enforce these various Codes of Ethics, Peru has also adopted numerous implementing commissions. These include the Commission on Transparency and Corruption of the Ministry of Justice, the Ethics Committee of the Office of the

³ These include the Parliament of Peru, the President of the Council of Ministers, the National Police, the Ministry for the Advancement of Women and Human Development (PROMUDEH), the Office of the Comptroller General, the National Elections Board and its decentralized offices at the local level, the Supervisory Agency on Private Investment in Telecommunications (OSIPTEL), the Inspectorate of Health Services Institutions (SEPS) and its SEPS Conciliation and Arbitration Centre, the National Inspectorate of Public Record Offices (SUNARPSN), the Arbitration and Conciliation Centre of the Ministry of Labour and Social Services, the Ministry of Production, and the Police Ombudsman.

Comptroller-General, the Commission on Ethics, Transparency and Corruption of the General National Archive, the Commission on Transparency and Corruption of the Agency for Official Registration of Informal Property (COFOPRI), the Commission on Transparency and Corruption of the National Prisons Institute (INPE), and the Teachers' Association of Peru.

4. *Private Sector Preventive Measures*

In the private sector, the non-governmental organization "Proética" (National Council for Public Ethics) is a key preventive anti-corruption group. It is both the local chapter of Transparency International and a coalition of four domestic institutions: (a) the Commission of Andean Jurists (CAJ); (b) the Association for Civil Transparency; (c) Institute for Press and Society (Ipys); and (d) Association of Exporters (ADEX). Proética promotes citizen participation, public sector transparency, policy dialogue, and business ethics. More concretely, it is also designing anti-corruption action plans for three regional state governments. The Chamber of Commerce also has facilitated numerous anti-corruption conferences aimed at the private sector.

Peru has a strong history of press freedom with an active and independent press, galvanized by the events of the 1990s. Pursuant to article 4 of the Constitution, there is a guaranteed freedom of the press, including the right to distribute information, opinions, and expressions without any previous authorization, censorship or any impediment. Taking advantage of these freedoms, the press engages in widespread coverage of matters involving alleged corruption by government officials.

5. *International and Regional Preventive Anti-Corruption Activities*

Beyond Peru's domestic efforts to combat corruption and its membership in the Conference of States Parties to the United Nations Convention Against Corruption, Peru also participates in several other regional and international anti-corruption preventive institutions. Peru is a member of the Conference of States Parties to the Organization of American States Inter-American Convention Against Corruption and participates in the MESICIC (Mechanism for Follow-Up on the Implementation of the Inter-American Convention Against Corruption) program. It is also part of the Andean Plan of Action against Corruption, approved by the Andean Community of Nations in 2007. Peru is also a member of an FATF-Style Regional Body, GAFISUD (Financial Action Task Force of South America), which monitors Peru's implementation of FATF measures against money-laundering and terrorist financing. During 2008, Peru also chairs the Anti-Corruption and Transparency Experts Task Force of the Asia-Pacific Economic Cooperation (APEC) organization. Finally, Peru is also one of four nations worldwide participating as a pilot country in the G8's Compact to Promote Transparency and Combat Corruption program.

It must be mentioned that Prime Minister Simons announced in November 2008 that Peru is considering the prompt ratification of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Summary findings Article 5:

Peru has in place the required preventive measures in accordance with Article 5.

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, by direct or indirect means, 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))⁴. 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.

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

⁴ 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).

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

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

Peru has a comprehensive legal regime covering both, active and passive bribery of public servants and government officials.

Under this statutory framework, delineations are drawn between bribes aimed at getting an official to breach his duties and bribes aimed at getting an official to perform his responsibilities in a manner not breaching his duties, i.e. facilitation or expediting payments. Both forms of bribes are criminalized, the difference is in the degree of punishment.

The law also draws a distinction between bribes involving judicial and quasi-judicial officers and bribes involving other forms of public servants.

1. *Active Bribery*

Active bribery, as defined by subparagraph (a) of Article 15 of the UNCAC, is primarily criminalized by Penal Code Article 397 (General Offering of a Bribe), which covers “any person who, in any way, offers, gives, or promises an official or public servant a gift, promise, advantage or benefit, in order to perform or omit acts in violation of their duties,” as well as “any person who, in any way, offers, gives, or promises a gift, advantage or benefit, so that an official or public servant might perform or omit acts within the purview of their office or position, without breaching their duty.”

Specific to the judicial system, Penal Code Article 398 (Offering of bribes to influence discretion) covers “any person who, in any way, offers, gives or promises a gift, advantage or benefit to a judge, government attorney, expert, arbitrator, member of an administrative tribunal or a similar official, in order to influence the decision on a matter submitted to their attention or jurisdiction,” as well as where “the gift, promise, advantage, or benefit is offered or presented to a court clerk, reporter, specialist, assistant of justice, witness, translator or interpreter, or a similar person.”

2. *Passive Bribery*

For passive bribery offenses, Peru draws an additional distinction between government officials who merely accept a bribe that has been offered, and those who actively solicit such bribes, who receive increased punishment.

Passive bribery, as defined by subparagraph (b) of Article 15 of the UNCAC, is criminalized by Penal Code Article 393 (Acceptance or solicitation of bribes for violation of official duty), which covers “any government official or public servant who accepts or receives a gift, promise, or any other advantage or benefit in order to perform or omit an act in violation of their duties, or who accepts such as a

consequence of having breached said duties,” with increased punishment for a public official who either “directly or indirectly solicits a gift, promise, or any other advantage or benefit in order to omit an act in violation of their duties or as a consequence of having breached said duties,” or who “conditions their performance of the duties arising from their office or position to the presentation or promise of a gift or advantage.” In addition Article 394 (Acceptance or solicitation of bribes for performance of official duty) covers any “official or public servant” who “accepts or receives a gift, promise, or any other advantage or undue benefit, in order to perform an act within the purview of their office or position, without breaching their duty, or as a consequence of an act already performed,” with increased punishment where such official “directly or indirectly solicits a gift, promise, or any other undue advantage in order to perform an act within the purview of their office or position, without breaching their duty, or as a consequence of an act already performed.”

For judicial and quasi-judicial officials, passive bribery is covered by Article 395 (Acceptance or solicitation of bribes to influence discretion) which covers any “judge, arbitrator, government attorney, expert, member of an administrative tribunal or other similar official who in any way accepts or receives any form of gift, promise, or any other advantage or benefit, in the knowledge that its intention is to influence or decide a matter submitted to their attention or jurisdiction,” with increased punishment when such officials “directly or indirectly solicit a gift, promise, or any other advantage or benefit in order to influence the decision on a matter submitted to their attention.” Lesser officials are covered by Article 396 (Acceptance or solicitation of bribes by assistants of justice) which covers situations where the “the perpetrator is a court clerk, reporter, specialist, assistant of justice, or any other person similar to the foregoing.”

Other relevant provisions of the Penal Code include article 382 (Extortion), article 383 (Overcharging), article 399 (Improper negotiation and abuse of office), article 400 (Influence peddling) and article 401 (Illicit enrichment).

3. *Scope of Bribery Statutory Framework*

Public officials and government officials are broadly defined in Article 425 of the Penal Code. Moreover, Article 425 has been broadly interpreted by Peru’s courts to cover even “de facto” government officials, as was the case in the prosecution of former intelligence chief Vladimiro Montesinos for corruption.

On the other hand, this statutory framework does not expressly cover gifts or benefits given to a third party, such as a relative or political party. As a practical matter, in many cases such third party corruption can still be prosecuted using the primary and secondary accomplice provisions of Article 25 of the Peruvian Criminal Code, or the conspiracy provisions of Article 24. Nevertheless, the statutory bribery regime does not fully meet the requirements of Article 15 of the UNCAC.

Summary findings Article 15:

Peru has adopted most of the measures required in accordance with Article 15, although the Penal Code does not expressly cover gifts or benefits given to a third party.

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.⁵

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 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.

5 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)).

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

Peru has not criminalized either the active or the passive bribery of foreign and international public officials.

Summary findings Article 16:

Peru has not adopted the measures required in accordance with Article 16.

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 diversion⁶ 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

Peru’s legislative framework divides embezzlement into two separate areas: peculation (*peculado*, 387) and embezzlement (*malversación*, 389), which can be committed only by a public official, and illicit appropriation (*apropiación ilícita*), which can be committed by everybody.

Specifically, Penal Code Article 389 (Embezzlement) covers anyone who converts “money or goods that they administer to a different final application from that to the ones that are destined, affecting the service or the function entrusted,” with increased

⁶ 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).

penalties for embezzling such funds meant for “programs of social support” or “of welfare development.”

In turn, Article 387 (Fraudulent Peculation) covers government officials who misappropriate significant public “effects” entrusted to them, with increased penalties for such misappropriation of effects designed for “welfare” or “social support programs,” while Article 388 (Peculation of use) covers government officials who misappropriate government “vehicles, machines or any another instrument of work belonging to the public administration.” Misappropriation (*apropiación ilícita*) is also separately criminalized by Penal Code Article 190, which expressly covers anyone, be they a public or private official, who misappropriates “personal property, a sum of money, or a value” that has been entrusted to them.

Taken together, these provisions of law cover all areas of embezzlement and misappropriation required, and Peru is in full compliance with Article 17 of the UNCAC.

Summary findings Article 17:
Peru has adopted the measures required in accordance with Article 17.

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*

Peru recently amended its Penal Code in July 2007 to enact Article 409 A (Obstruction of Justice), which covers any person who “by use of physical force or threats or by the offer or granting of an improper benefit impedes or obstructs the provision of testimony or evidence or induces the provision of false testimony or evidence.” Penal Code Article 372 (Interference with documents used as evidence in proceedings) covers any person “who removes, conceals, alters, destroys or renders useless objects, records or documents intended to be used as evidence before the competent authority hearing the case and entrusted to the safekeeping of a public official or other person,” and Penal Code Article 368 (Resistance to or disobedience of authority) covers anyone “who disobeys or resists an order given by a public official in the performance of his duties.” Overall, these provisions appear to implement the requirements of Article 25(a).

2. *Interference with actions of judicial or law enforcement officials*

As previously noted, Penal Code Article 398 (Offering of bribes to influence discretion) covers “any person who, in any way, offers, gives or promises a gift, advantage or benefit to a judge, government attorney, expert, arbitrator, member of an administrative tribunal or a similar official, in order to influence the decision on a matter submitted to their attention or jurisdiction,” as well as where “the gift, promise, advantage, or benefit is offered or presented to a court clerk, reporter, specialist, assistant of justice, witness, translator or interpreter, or a similar person.” Penal Code Article 405 (Complicity) also covers any person “who obstructs justice by seeking to bring about the disappearance of the traces or evidence of a crime or concealing the effects thereof.” The general bribery provisions discussed, *supra*, under UNCAC Article 15 would also include inducements to law enforcement officials.

However, neither of these provisions would appear to cover *coercion* against judicial or law enforcement officers, as opposed to inducements.

While some of the Peruvian officials interviewed by the reviewers were of the opinion that Article 409-A, discussed above, could be read broadly enough to cover coercion against judges or law enforcement officials, others noted that in practice courts did not interpret it to include such officials. They also noted there had been two recent cases involving threats and violence against judges that had resulted in acquittals, due to such a narrowly defined interpretation of Article 409-A.

<p>Summary findings Article 25: Peru has adopted most of the measures required in accordance with Article 25, although it appears that coercion against judicial and law enforcement officers is not covered in the Penal Code.</p>
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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, paragraphs (9) and (13)

1. Article 46(9)

International cooperation is regulated in a comprehensive manner in Chapter VII of the Criminal Procedural Code of 1994, which is being rolled out throughout Peru between now and 2011, so that this law is the a basis for the following analysis. Article 529, viewed in context with Article 511 I (h), of Peru's Code of Criminal Procedure of 1994 only requires dual criminality for the coercive measures of the "blocking of accounts, embargoes, seizure or confiscation of the proceeds of crime, freezing of assets, registers of addresses, searches, monitoring of communications,

identification or location of the product of the property and the tools used in the commission of a crime, and other measures which limit rights.” All other non coercive mutual legal assistance can be provided without dual criminality. Chapter VII of the Code of Criminal Procedure also includes enhanced reciprocity rules that increase the level of mutual legal assistance available.

On the other hand, many Peruvian regulatory institutions noted that, as a practical matter, Peru’s banking secrecy laws limit the extent it can cooperate with other States Parties in the free exchange of information in the absence of dual criminality. This is particularly problematic in the area of corporations and other legal persons, as Peru does not have criminal liability for legal persons. This could be the basis for declining mutual legal assistance, as art. 510 para. 3 Criminal Procedure Code makes the execution of a request conditional to the fact that the request does not contradict national law.

In particular, Article 140 of the SBS Act (No. 26702) prohibits institutions of the financial system and their directors and employees from disclosing any information on their clients’ passive transactions, unless the client in question has given written authorization. To work around this issue, Peru has a practice of encouraging suspects to voluntarily waive their rights to banking secrecy using standardized waiver documents.

These SBS banking secrecy rules do have an exception for transactions suspected to involve the laundering of money or assets, which require financial institutions to report such transactions to the Financial Intelligence Unit. In turn, the SBS’s Financial Intelligence Unit is a member of the Egmont Group and is authorized to cooperate with FIUs of other Egmont Group members.

Article 143(c) of the SBS Act also waives banking secrecy upon a request from “the Attorney-General of the Government of a country with which an agreement has been concluded to combat, suppress and punish illicit drugs trafficking or terrorism or, more generally, in the case of transactions suspected to involve the laundering of money or assets, with regard to financial transactions and banking operations carried out by persons suspected of involvement in such criminal activities or persons who are under investigation on suspicion of bearing responsibility for them.”

Peru also has negotiated several bilateral mutual legal assistance agreements with other countries in the region and is part of well-developed collaboration among prosecutors in the region.

2. *Article 46(13)*

Peru advised the United Nations in February of 2008 that the central authority in criminal matters responsible for processing requests for international judicial assistance pursuant to the UNCAC is the Office of the Attorney-General (*Ministerio Público*), represented by the Attorney-General, Ms. Adelaida Bolívar Artega.

Summary findings Article 46 paragraphs 9 and 13:

Peru has adopted the measures required in accordance with Article 46 paragraphs 9 and 13.

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

1. Paragraphs 1, 2 and 3

Peru has a comprehensive legal structure in place to implement Article 52 of the UNCAC. The primary legislative vehicle is the Act on the General Financial System, the Insurance System, and the Structure of the Inspectorate of Banking, Insurance and Private Pension Funds, which provides broad regulatory powers to the SBS. Peru has also created a Financial Intelligence Unit, which is a full member of the Egmont Group and authorized to receive and share information with other Egmont Group members.

Peru is also a member of GAFISUD, an FATF-Style Regional Body (FSRB) responsible for facilitating implementation of the 40 FATF Recommendations and 9 Special Recommendations and, within the SBS and the FIU, has adopted detailed regulations regarding the prevention of money-laundering, the financing of terrorism. (These are primarily contained in Acts 27693, 28306, and 29038, Supreme Decrees 163-2002-EF and 018-2006-JUS, and SBS Resolutions 904-97 and 479-2007.)

The recently enacted SBS Resolution 479-2007, in particular, provides detailed procedures for client identification, verification of information on client identification, adoption of reasonable measures to determine the identities of the final users of funds deposited in large accounts, intensified scrutiny of all accounts requested or maintained by or on behalf of persons who perform or have performed prominent public functions (PEPs) and members of their families and close associates. Peru issues detailed advisories to its financial institutions, and is particularly proactive in the area of PEP advisories, including Resolutions 001 and 020-2007-UIF-Peru, which cover the “Entry in and updating of the list of politically exposed persons.” However, according to the SBS the focus of advisories continue to be more focused on counter-terrorism financing and money-laundering, as opposed to anti-corruption activities.

In addition, SBS Regulation 479-2007 provides that financial institutions under SBS supervision must reliably determine the public post held or function performed and the name of the institution of their clients, and reinforce their client-identification procedures in the case of politically exposed persons. This reinforcement imputes the incorporation of additional measures of client-identification procedures, including

identifying the sources of funds, obtaining information on the principal suppliers and clients, and conducting client reviews at least once a year.

Financial institutions and other regulated bodies are also required to keep detailed financial records, including records of the transactions of their clients, which include persons who perform or have performed prominent public functions and the members of their families and close associates. More specifically, detailed records must be kept of the document-verified identity and address of their clients, formal registration of clients is also required using reliable means to identify, title, address, legal capacity, occupation and marital status of both legal and natural persons, using recognized documents such as national identity cards, passports, aliens' registration cards, birth certificates, driving licences, company contracts, statutes, and other official and private documents. Such records must also include a description of the type of transaction, amount, currency, account(s) involved as appropriate, place(s) where the transaction was carried out, and dates. Records must also be kept of the natural or legal persons involved in the transaction, the identity of the person who physically carried out the transaction, the person on whose behalf the transaction was carried out, and the beneficiary or the destination of the funds. In that regard, registration is required for transactions in amounts of US\$10,000 or more, except in the case of transfers of funds, when transactions of only US\$2,500 or more must be registered. The records of transactions are kept for a period of 10 years and must be made available to jurisdictional bodies and competent authorities in accordance with the law.

Notwithstanding this comprehensive regime, many commented to the reviewers that a large percentage of financial transactions nevertheless remain unreported due to the prevalence of an informal economy in many sectors of Peru's economic system. This black market is of course unreported as it does not flow through regulated financial institutions, and therefore remains an area of insufficient coverage.

2. *Paragraph 4*

Shell banks are forbidden to operate in Peru under SBS Regulation 446-200.

In addition, Peru's financial institutions may only act as correspondents for institutions classified as being in the "first rank," which at least implicitly bars them from working with shell banks that are not regulated in a manner similar to the actions of Peru's SBS and Central Reserve Bank. However, it is believed that Peru would benefit from more express statutory and regulatory clarity in this regard to ensure that Peruvian Banks would be barred from working with shell banks operating outside Peru, pursuant to the optional requirements of UNCAC Article 52(4).

3. *Paragraphs 5 and 6*

Peru has adopted a detailed public financial disclosure system for its key public officials, pursuant to Act 27482 (and Supreme Decree 080-2001-PCM, implementing regulations for this Act). This law covers the obligation of public officials and employees of the State to submit asset declarations (*declaraciones juradas*) of their earned and unearned income and property, including accounts, pursuant to articles 40 and 41 of the Constitution and with the procedures for their publication, regardless

of the schedule under which the persons concerned work, conclude their contracts or establish their relationship with the State.

The asset declaration must be given by all obliged individuals at the entry into office, every year during their office and at the end of their tenure. The obligation to submit asset declarations is essential in the context of art. 401 of the Criminal Code, which establishes illicit enrichment as a criminal offence.

Individuals covered by this law include:

(a) The President of the Republic and the Vice-Presidents; Members of Congress; Ministers of State and Deputy Ministers; judges of the Supreme Court, the higher courts, specialized courts and courts of combined jurisdiction; the Attorney-General of the Nation; supreme, higher and provincial prosecutors; members of the Constitutional Court, the National Council of the Magistrature and the National Elections Panel; the President of the Central Reserve Bank; the directors and general manager and the officials of the Board of the Central Reserve Bank; the National Ombudsman and the Deputy National Ombudsman; the Comptroller-General of the Republic and the Deputy Comptroller-General; the heads of SBS, SUNARP, ADUANAS and SUNAT and the deputy heads; the head of the National Elections Office; and the head of the National Register of Identity and Civil Status;

(b) Municipal mayors and aldermen who administer funds in excess of 2,000 tax units a year; ambassadors and heads of diplomatic missions; presidents of the regions; members of the Regional Coordination Council; and the rectors, vice-rectors and faculty deans of public universities;

(c) Serving general officers and admirals of the armed forces and the National Police of Peru, and officers employed in operational units responsible for combating illicit drugs trafficking. Senior officers commanding large and other units and quartermasters-general of the armed forces and the National Police;

(d) Directors, managers and employees holding posts of trust or managerial responsibility in the Office of the President of the Republic, the ministries, the Commission on the Promotion of Private Investment (COPRI), the ad hoc committees on the promotion of investment (CEPRIS), autonomous agencies, decentralized autonomous agencies, regulatory bodies, decentralized public institutions, chairmen of audit and/or receivership commissions, and chairmen and directors of the Non-Governmental Organizations Council who administer resources provided by the State;

(e) Public prosecutors, ad hoc public prosecutors, deputy prosecutors; prefects and deputy prefects; persons representing the State on company boards; holders of portfolios; and heads of agencies, institutions and projects which form part of the State. This obligation extends to the heads or persons in charge of the treasury, budgetary, accounting, oversight, logistics and public sector supply systems;

(f) In the case of enterprises in which the State has a majority shareholding: board members, general managers, and heads or persons in charge of the treasury, budgetary, accounting, logistics and supply systems. In the case of enterprises in

which the State is involved without a majority shareholding: board members appointed by the State;

(g) Advisers and consultants of the persons mentioned in paragraph (a) above and advisers and consultants of persons in charge of government departments, including those holding honorary posts duly appointed by resolution;

(h) All persons who administer or manage resources of the State or of bodies supported by the State.

Further, a pilot programme is exploring the opportunities of an even more detailed disclosure for approximately 100 high-risk officials (*fiscalización integral*).

The reviewers were advised that many view these “sworn statements” process as cumbersome and overly ambiguous. However, the reviewers were further advised that there is a new law on asset declarations pending which will expand the scope of these public disclosure laws, and hopefully also clarify and streamline the procedures.

Summary findings Article 52:

Peru has adopted the measures required in accordance with Article 52.

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 511, paragraph (h) of the Code of Criminal Procedure authorizes international judicial cooperation in the area of asset recovery, including the “blocking of accounts,” the “seizure or confiscation of the proceeds of crime,” and the “freezing of assets.” Peru has also streamlined its asset recovery process by the recently adopted Legislative Decree 992, which went into effect January of 2008 and which authorizes the extinction of rights and/or titles to illicitly obtained property, without payment or compensation of any kind.

Peru also has a well-developed history of engaging in international asset recovery activities. In particular, it has established a fund for the administration of assets, the Special Fund for the Administration of Funds Obtained Illegally (FEDADOI), which works closely with the Commission for the Administration of Seized and Confiscated Assets (COMABID) within the Ministry of Justice. Peru has been especially successful in recovering funds from the United States of America, where many proceeds of corruption from Peru have been historically transferred, as well as repatriating stolen assets from the Cayman Islands and Switzerland, two other historical destinations for such funds.

Peru is currently developing a program of action in this field in the context of the StAR Initiative led by UNODC and the World Bank.

Summary findings Article 53:

Peru may require further legislation or amendments to civil procedures, or jurisdictional and administrative rules, to ensure it has adopted all the measures required in accordance with Article 53.

4. Elements for a national action plan

Peru will bring the following actions, which are based on the findings of the review and formulated in consultation with the review team, to the attention of all national stakeholders for the development of an action plan:

a) Actions with regard to the implementation of mandatory requirements of the Convention

UNCAC Article 15

- (i) Revise the bribery statutes to expressly cover indirect benefits provided to third parties linked to corrupt public officials (art. 397, active bribery).

UNCAC Article 16

- (ii) Draft, adopt and implement a law criminalizing the active bribery of foreign and international public officials.

UNCAC Article 25

- (iii) Revise the statutory framework, and increase capacity-building training, to ensure that obstruction of justice involving threats and assaults on judicial and law enforcement officers can be properly prosecuted.

UNCAC Art. 53

- (iv) Further refine the legislative framework and operational aspects of the regulations to allow measures for direct recovery of property by other States Parties.

b) Possible actions for the implementation of non-mandatory provisions of the Convention and for the fight against corruption

UNCAC Article 5

- i) Finalize and publish a national anti-corruption plan.
- ii) Clarify the roles of its different anticorruption institutions to enhance efficiency and ensure optimal cooperation and coordination between them. Enhance capacity building training to law enforcement agencies and prosecutorial bodies to ensure and develop an optimal level of cooperation between such bodies and other institutions.
- iii) Provide the *Contraloría* with a wider range of administrative sanctions to complement available criminal sanctions, to ensure effective and proportionate dissuasive sanctions are available for acts of misconduct that do not require criminal prosecution.
- iv) Introduce new procedures for recruitment to the police, prosecution service and the judiciary, including considering how the adjustment of salaries could assist in recruiting and retaining well-qualified personnel. Establish multi disciplinary teams for the investigation and prosecution of corruption cases.
- v) Introduce updated technological tools necessary for conducting targeted and efficient investigations into complex corruption cases and establishing multi disciplinary teams to investigate and prosecute such matters.
- vi) Increase capacity building training programs for the police, including specialized training on the use of special investigative methods, complex financial investigations, and enhancing the capacity to trace, seize and confiscate assets.

- vii) Undertake increased anti-corruption capacity building activities amongst the judiciary, in order to enhance their work and decrease the public perception that the judiciary is deficient in transparently and efficiently implementing anti-corruption policies.
- viii) As Peru implements its revised Criminal Code and Code of Criminal Procedure between now and 2011, which will greatly increase the role and powers of the prosecution, concomitantly engage in comprehensive training and oversight activities for prosecutors to ensure that they are fully capable of assuming their expanded role in a transparent and efficient manner.

UNCAC Article 15

- ix) Revise its bribery statutory framework to eliminate the delineations between bribery with and without connection to the violation of the public official's duties, as this might serve to enhance the public perception that some forms of bribery are more acceptable than others.

UNCAC Article 25

- x) Refine legislative framework and operational aspects of regulations concerning the obstruction of justice through coercion against judicial and law enforcement officers.

UNCAC Article 46

- xi) Review banking secrecy laws and, if appropriate and necessary, enact necessary amendments to such laws, in particular to facilitate non-coercive mutual legal assistance in the absence of dual criminality.

UNCAC Article 52(1)

- xii) Consider ways to bring the informal economy under closer scrutiny and ensure that financial institutions can properly report on suspicious transaction involving this largely unregulated area of Peru's informal financial system.
- xiii) Further refine the legislative framework and operational aspects of the regulations concerning the monitoring of PEPs accounts.

UNCAC Article 52(2)

- xiv) Issue additional corruption-specific advisories to financial institutions.

UNCAC Article 52(5)

- xv) Streamline and simplify reporting requirements, in the context of implementing the already planned revisions to asset disclosure laws.

5. Possible priorities for cooperation formulated by Peru in consultation with the review team

In the meetings organized during the country visit, Peruvian authorities indicated to the reviewing experts possible areas for cooperation and technical assistance. These areas were summarized and presented in a list (Annex V), which contains proposals for further activities in the institutional context of:

- The National Anti-Corruption Office (ONA) – (these would relate to the *Secretaría de Gestión Pública* – PCM – after the institutional reform described above under 2.)
- the Ministry of Justice and *Procuradurías*
- the Judiciary
- the FIU
- the Office of the Comptroller-General
- the cooperation with civil society.

Peru recognizes that such a list is usefully complemented by the additional areas for cooperation and technical assistance which can be derived from the possible Action Plan formulated above on the basis of the current review process.

A comprehensive list for long-term cooperation will be elaborated by Peruvian authorities.

In the short and medium-term, Peru considers that some priority areas for cooperation and technical assistance are:

- Elaboration and implementation of the National Anti-Corruption Plan;
- Consultancy for risk analysis in the development of sectorial programs against corruption;
- Model legislation for the criminalization of the active bribery of foreign and international public officials;
- Consultancy for the issuing of additional corruption-specific advisories to financial institutions; and
- Consultancy for the establishment of multi-disciplinary teams for the investigation and prosecution of corruption cases.

ANNEX I

Procedural findings for reviewing UNCAC implementation in the various steps

1. Self-assessment checklist

The self-assessment checklist submitted by Peru contained comprehensive information. It gave an initial picture of Peru's own assessment of where the country was in compliance with the Convention, where gaps existed, where it needed technical assistance to bring its measures into compliance and what type of assistance it required.

The self-assessment checklist in its current format gives countries the possibility to provide basic informative responses to the yes/yes in part/no answers. It does not oblige countries to provide further analysis, inter alia, on relevant legislation, policy and supporting documentation. Despite the fact that Peru had completed the checklist in a comprehensive manner, it was not possible for the experts to review the implementation by Peru of the selected articles of the Convention solely on the basis of the checklist responses.

2. Active Dialogue

During the active dialogue of the experts with the Peruvian counterparts, some of the outstanding issues could be clarified. In addition, Peru submitted supporting documents and new information, including a decree by which the National Anti-Corruption Office was established. However, the documents were submitted in Spanish and it was not possible to translate them in time for the country visit.

3. Country visit

The meetings organized during the country visit provided useful additional information. They all started with a presentation by the Peruvian authorities/participants which provided more in-depth information on measures in place to implement the relevant provisions of the UNCAC, perceived gaps and needs for assistance. The presentations were followed by question and answer sessions with the reviewers. In all meetings an active dialogue between the Peruvian participants and the reviewers took place. The dialogue was conducted in a very open and cooperative manner.

The presentations were very valuable as a means of providing the additional information required for reviewing the implementation of the relevant articles to a reasonable degree. In addition, the presentations created a sense of ownership of the reviewed country as they were initiating the discussions through the briefings. However, when further elaborating the design of an assessment-methodology, the utility of presentations should be given careful consideration. Generally, presentations should be limited in time and numbers, giving the opportunity to elaborate the relevant issues in depth. It should be stressed that such an approach requires a thorough revision of the checklist, securing availability of relevant legal and policy texts, as well as adequate information for assessing issues of effectiveness.

Overall, the country visit provided a more complete and nuanced picture of the implementation of the UNCAC in Peru. The meeting with civil society added valuable information on the general anti-corruption situation, the functioning of various institutions, as well as the role of the media and civil society.

4. Lessons learned

Two issues which had been identified as important challenges of the overall pilot programme, namely time and language, have also in this specific case emerged as issues which required specific attention when addressing the continuation of the pilot programme, as well as the terms of procedure for a full-fledged mechanism.

The experts emphasized the importance of having sufficient time available to prepare the country visits properly. Since several documents were received only shortly before the country visit, and there was no time to have these translated into English. The same applied for documents distributed during the country visit. While there was simultaneous interpretation throughout the meetings, it would have been useful to have the appropriate supporting documents translated in English prior to the visit. This would have allowed the experts to prepare themselves better to ask pertinent questions in the interview sessions.

In this context, it was also noted that the format of the questions in the checklist generated mostly generic replies. The experts emphasized that the format of the questions needed to be revisited in order to elicit substantive responses which in turn would allow for a proper evaluation of the implementation of the UNCAC. In order to draw a comprehensive picture of the anti-corruption measures put in place by Peru, the checklist responses needed to be complemented with a review of the relevant legislation, which should be preferably translated into a language understandable to the examining countries. Despite the fact that a link to the relevant legislation was provided by the Peruvian authorities, the experts highlighted the need to have the legislation well in advance prior to the country visit in order to conduct an in-depth review.

In this context, it would be useful to establish clear deadlines prior to the country visit for the submission of supporting documents, including legislation. This will enable the experts to decide whether they have sufficient information available to conduct the country visit and determine appropriate dates.

This being the first country visit, the experts were tasked with some procedural issues, which would be ideally taken from them. Established procedures regarding the format of the country visits, the programme, duration, guidance on the issues to be discussed etc. will greatly assist the experts taking part in future country visits. As is the case for the overall pilot programme a clearly defined role of the UNODC Secretariat in organizing these visits will allow the experts to focus on the tasks at hand.

Annex II.

Calendar of events:

Self-assessment checklist

- 15/08/07: Peru submits its self-assessment checklist, which is then translated and submitted to the reviewing countries Argentina and Norway. (15/08/2007)

Dialogue:

- 29/09/2007: Peru informs Argentina and Norway of their contact point and requests information on their contact point. Peru proposes a tentative calendar for different steps to be taken under the pilot programme. It expresses its readiness to receive a country-visit.
- 27/10/2007: Peru informs Argentina and Norway on the following:
 - The creation of the National Anti-corruption Bureau on 19/10/2007
 - The intention of revising Articles 5 and 6
 - The intention of responding to questions posed by Argentina with respect to prevention issues and asset recovery issues
- 30/10/2007: Argentina discusses with Norway desirability of visit to Peru
- 4/11/2007: Peru submits updated legislation (in Spanish) and proposed two dates for country visit to Peru in 2007.
- 9/11/2007: Norway poses questions and requests additional information and clarifications from Peru.
- 15/11/2007: UNODC organizes telephone conference with Peru, Argentina and Norway during which the planned country visit is also discussed.

Country visit:

- 21/11/2007: Peru proposes dates of 17-18 January 2008 for country visit upon mutually agreed upon terms of reference.
- 3/12/2007: Dates suggested by Peru are agreed upon by Argentina, Norway and UNODC.
- 12/12/2007: In the context of the meeting of the Pilot Review Group a planning meeting for the country visit takes place during which an outline of the programme for the visit is discussed. The reviewing experts are requested to submit in advance issues for discussion during the country visit and logistical issues are outlined.
- 9/1/2008: Norway submits themes for the meetings to be conducted during the country visit, as well as additional questions.
- 16-18/1/2008: Country visit to Peru is conducted

**Annex III:
List of mission participants**

Norway:

Helle Klem
Assistant Director General
Ministry of Foreign Affairs

Atle Roaldsøy
Senior Adviser
Ministry of Justice

Argentina:

José Ipohorski Lenkiewicz
Anticorruption Office
Ministry of Justice

Santiago Mariani
Anticorruption Office
Ministry of Justice

UNODC:

Brigitte Strobel-Shaw
Crime Prevention and Criminal Justice Officer
Crime Conventions Section, Division for Treaty Affairs

Dorothee Gottwald
Associate Expert
Crime Conventions Section, Division for Treaty Affairs

Coordinators of visit by Peru:

National Anticorruption Office:
Carolina Lizárraga, Chief
Franz Chevarría, Consultant

Ministry of Foreign Affairs:
Rómulo Acurio, Minister Counsellor
César Talavera, Third Secretary

Annex IV:

Programme of the Country Visit

Wednesday, 16 January

17:00 Coordination meeting with the visiting experts
(Hotel Plaza del Bosque, Av. Paz Soldán 190, San Isidro)

Thursday, 17 January

Meetings with National Institutions

08:30 Introductory meeting with ONA/MFA
(Hotel Plaza del Bosque)

10:00 Office of the Comptroller General
(Camilo Carrillo 114, Jesús María)

12:00 Ministry of Justice/Procuradurías
(Scipión Llona 350, Miraflores)

16:00 Office of the Superintendent of Financial Institutions and
Financial Intelligence Unit
(UNODC, Av. Pablo Carriquiry 760, San Isidro)

17:00 Judicial Power
(UNODC, Av. Pablo Carriquiry 760, San Isidro)

20:30 Dinner offered by National Office for Anticorruption/Ministry of
Foreign Affairs (Huaca Pucllana, General Borgoño,
Miraflores)

Friday, 18 January

Meetings with National Institutions, Civil Society and Donor Community (UNODC, Av. Pablo Carriquiry 760, San Isidro)

10:00 Ministry of Foreign Affairs

11:00 Civil Society: Proética (Chapter of Transparency International)

12:00 Donor Community

13:00 José Ugaz Sánchez-Moreno, former Ad Hoc Prosecutor for the
Fujimori/Montesinos case

15:00 National Office for Anticorruption

16:00 Debriefing with ONA / MFA

Annex V:

Visita al Perú de expertos de Argentina-Noruega-UNODC en el marco del Programa Piloto de implementación de la Convención de Naciones Unidas contra la Corrupción⁷

POSIBLES PRIORIDADES DE COOPERACION Y ASISTENCIA TECNICA

Oficina Nacional Anticorrupción

1. Capacitación en políticas de transparencia
2. Desarrollo de programas de programa anticorrupción en sector salud
3. Desarrollo de programas de programas anticorrupción en sector educación
4. Desarrollo de políticas anticorrupción a nivel descentralizado

Ministerio de Justicia – Procuradurías

5. Fortalecimiento institucional de procuradurías públicas descentralizadas.
6. Legislación modelo sobre soborno de funcionarios internacionales.
7. Desarrollo de campañas públicas para la incitación de denuncias sobre corrupción.
8. Aplicación de mejores prácticas para protección de testigos en colaboración eficaz.
9. Aplicación de mejores prácticas para aplicación de normas procesales.
10. Capacitación de operadores en recuperación de activos (Ministerio Público, Procuradurías, etc).
11. Aplicación de mejores prácticas en cooperación especial para recuperación de activos.
12. Mecanismo de comunicación en línea entre autoridades encargadas de recuperación de activos.
13. Desarrollo de software adecuado para manejo de casos de recuperación de activos.

Poder Judicial

14. Capacitación de jueces en varios temas de la UNCAC (recuperación de activos, pérdida de dominio, etc).
15. Legislación modelo sobre soborno privado-privado.
16. Legislación modelo sobre soborno de directivos de empresas público-privadas.

Unidad de Inteligencia Financiera

16. Legislación modelo y aplicación de mejores prácticas acerca de sistemas de alerta sobre individuos susceptibles de corrupción.
17. Legislación modelo y aplicación de mejores prácticas sobre vigilancia financiera de sector informal.

⁷ This document was handed out to the review team at the country visit debriefing session with the ONA/MFA on Friday, 18 January 2008.

18. Capacitación prioritariamente en los siguientes temas: a) tipologías de enriquecimiento ilícito, b) modalidades de malversación de fondos, c) fraudes contables e informáticos.

19. Aplicación de mejores prácticas en materia de: a) comercio internacional (mercaderías vis a vis documentos de embarque) y b) auditorías forense en procesos económicos-financieros.

Contraloría General de la República

20. Continuación de proyecto de modernización de sistema de control (BID)

Cooperación Proética-ONA

21. Desarrollo de alianza Estado-sociedad civil para prevención de la corrupción a nivel regional y local.