

(OAS) INTER-AMERICAN CONVENTION AGAINST CORRUPTION

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Preamble

THE MEMBER STATES OF THE ORGANIZATION OF AMERICAN STATES,

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

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

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

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

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

RECOGNIZING that, in some cases, corruption has international dimensions, which

requires coordinated action by States to fight it effectively;

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

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

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

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

HAVE AGREED

to adopt the following

INTER-AMERICAN CONVENTION AGAINST CORRUPTION

Article I

Definitions

For the purposes of this Convention:

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

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

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

Article II

Purposes

The purposes of this Convention are:

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

Article III

Preventive Measures

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

1. Standards of conduct for the correct, honorable, and proper fulfillment of public functions. These standards shall be intended to prevent conflicts of interest and ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions. These standards shall also establish measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions. Such measures should help preserve the public's confidence in the integrity of public servants and government processes.
2. Mechanisms to enforce these standards of conduct.
3. Instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities
4. Systems for disclosing the income, assets and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such disclosures public.

5. Systems of government hiring and procurement of goods and services that assure the openness, equity and efficiency of such systems.
6. Government revenue collection and control systems that deter corruption.
7. Laws that deny favorable tax treatment for any individual or corporation for expenditures made in violation of the anticorruption laws of the States Parties.
8. Systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with their Constitutions and the basic principles of their domestic legal systems.
9. Oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts.
10. Deterrents to the bribery of domestic and foreign government officials, such as mechanisms to ensure that publicly held companies and other types of associations maintain books and records which, in reasonable detail, accurately reflect the acquisition and disposition of assets, and have sufficient internal accounting controls to enable their officers to detect corrupt acts.
11. Mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption.
12. The study of further preventive measures that take into account the relationship between equitable compensation and probity in public service

Article IV

Scope

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

Article V

Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offenses it has established in accordance with this Convention when the offense in question is committed in its territory.
2. Each State Party may adopt such measures as may be necessary to establish its jurisdiction over the offenses it has established in accordance with this Convention when the offense is committed by one of its nationals or by a person who habitually resides in its territory,
3. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offenses it has established in accordance with this Convention when the alleged criminal is present in its territory and it does not extradite such person to another country on the ground of the nationality of the alleged criminal.
4. This Convention does not preclude the application of any other rule of criminal

jurisdiction established by a State Party under its domestic law.

Article VI

Acts or Corruption

1. This Convention is applicable to the following acts of corruption:

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

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

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

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

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

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

Article VII

Domestic Law

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

Article VIII

Transnational Bribery

Subject to its Constitution and the fundamental principles of its legal system, each State Party shall prohibit and punish the offering or granting, directly or indirectly, by its nationals, persons having their habitual residence in its territory, and businesses domiciled there, to a government official of another State, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage, in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official's public functions.

Among those States Parties that have established transnational bribery as an offense,

such offense shall be considered an act of corruption for the purposes of this Convention. Any State Party that has not established transnational bribery as an offense shall, insofar as its laws permit, provide assistance and cooperation with respect to this offense as provided in this Convention.

Article IX

Illicit Enrichment

Subject to its Constitution and the fundamental principles of its legal system, each State Party that has not yet done so shall take the necessary measures to establish under its laws as an offense a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions.

Among those States Parties that have established illicit enrichment as an offense, such offense shall be considered an act of corruption for the purposes of this Convention.

Any State Party that has not established illicit enrichment as an offense shall, insofar as its laws permit, provide assistance and cooperation with respect to this offense as provided in this Convention.

Article X

Notification

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

Article XI

Progressive Development

1 . In order to foster the development and harmonization of their domestic

legislation and the attainment of the purposes of this Convention, the States Parties view

as desirable, and undertake to consider, establishing as offenses under their laws the

following acts:

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

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

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

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

2. Among those States Parties that have established these offenses, such offenses

shall be considered acts of corruption for the purposes of this Convention.

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

Article XII

Effect on State Property

For application of this Convention, it shall not be necessary that the acts of corruption

described therein harm State property.

Article XIII

Extradition

1. This article shall apply to the offenses established by the States Parties in

accordance with this Convention.

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

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

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

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

6. If extradition for an offense to which this article applies is refused solely on the basis of the nationality of the person sought, or because the Requested State deems that it has jurisdiction over

the offense, the Requested State shall submit the case to its competent authorities for the purpose of prosecution unless otherwise agreed with the Requesting State, and shall report the final outcome to the Requesting State in due course.

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

Article XIV

Assistance and Cooperation

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

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

Article XV

Measures Regarding Property

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

2. A State Party that enforces its own or another State Party's forfeiture judgment against property or proceeds described in paragraph 1 of this article shall dispose of the

property or proceeds in accordance with its laws. To the extent permitted by a State Party's laws and upon such terms as it deems appropriate, it may transfer all or part of such property or proceeds to another State Party that assisted in the underlying investigation or proceedings.

Article XVI

Bank Secrecy

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

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

ARTICLE XVII

Nature of the Act

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

Article XVIII

Central Authorities

1. For the purposes of international assistance and cooperation provided under this Convention, each State Party may designate a central authority or may rely upon such central authorities as are provided for in any relevant treaties or other agreements.
2. The central authorities shall be responsible for making and receiving the requests for assistance and cooperation referred to in this Convention.
3. The central authorities shall communicate with each other directly for the purposes of this Convention.

Article XIX

Temporal Application

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

Article XX

Other Agreements or Practices

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

Article XXI

Signature

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

Article XXII

Ratification

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

Article XXIII

Accession

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

Article XXIV

Reservations

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

Article XXV

Entry Into Force

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

Article XXVI

Denunciation

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

Article XXVII

Additional Protocols

Any State Party may submit for the consideration of other States Parties meeting at a General Assembly of the Organization of American States draft additional protocols to this Convention to contribute to the attainment of the purposes set forth in Article II thereof.

Each additional protocol shall establish the terms for its entry into force and shall apply

only to those States that become Parties to it.

Article XXVIII

Deposit of Original Instrument

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

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