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**RECOMMENDATIONS OF TRANSPARENCY INTERNATIONAL TO THE EIGHTH MEETING
OF THE COMMITTEE OF EXPERTS, WASHINGTON, D.C.
September 26, 2005**

Transparency International (TI) national chapters across the Americas view the implementation and enforcement of the Inter-American Convention Against Corruption (ICAC) as a key element of and framework for the fight against corruption in the hemisphere. The Follow-Up Mechanism plays a pivotal role for the enforcement of the Convention. TI actively contributed to its creation and values the work of the Committee of Experts in stimulating and monitoring reform by the State Parties.

TI national chapters have welcomed the opportunity to provide written submissions to and to meet with the Committee of Experts since its inception. Based on this experience, TI has developed the following recommendations for strengthening the MESICIC.

We urge the Committee to take action at the September 26, 2005 meeting on the following reforms that will reinforce the Committee's work in the First Round and will enhance its prospects for success in the Second Round. Without such reforms, there is growing public skepticism that the convention will achieve its potential.

Recommendations for the First Round

1. The Committee's recommendations in the Country Reports should be implemented fully and promptly. Resources should be committed to promote this outcome.

The success of the Committee's work depends on whether countries fully and promptly implement its recommendations. Sufficient technical assistance and financial resources must be made available, and TI calls on the State Parties to ensure this need is met for government and so that civil society can also participate. TI also calls on the World Bank, the IADB and other development agencies to make implementation of the Committee's recommendations a central component of country assistance strategies.

2. State Parties should report annually, starting with the 2006 OAS VI General Assembly, to the committee and to the public on their progress in implementing the recommendations.

The vital role of civil society in the fight against corruption has been recognized since the 1994 Summit of the Americas. The 1994 Plan of Action recognizes under the Invigorating Society/Community Participation Section that "Governments will: Review the regulatory framework for non-governmental actors with a view to facilitating their operations and promoting their ability to receive funds. This review will emphasize the management and oversight of resources as well as transparency and the accountability to society of said actors."

In order to play a meaningful oversight role, as called for by the leaders, civil society must have full information on the progress State Parties are making in fighting corruption. Therefore, States Parties should

be required to report annually to the Committee and to the public on implementation of the Committee's recommendations. Civil society should have an opportunity to provide its views on these reports to the Committee within 60 days of their publication.

Article 30 currently requires State Parties to report on measures adopted between meetings. Article 30 should be amended to provide for an annual progress report specifically on the Committee's recommendations that would be made public.

3. The MESICIC should be more transparent: States Parties' responses to the questionnaire and Country Reports should be published on the OAS website.

As noted above, leaders recognize the need for civil society to have adequate information to perform their oversight role. Yet to date, only 23 of 28 states have authorized publication of their responses to the questionnaire. Fifteen states of the 18 states reviewed to date have authorized publication of their Country Reports.

TI urges the State Parties to agree to make all MESICIC documents public, including on the OAS website.

TI proposes that the final clause of article 21 of the Rules of Procedure, on Responses to the Questionnaire, be modified to incorporate the following phrase at the end: "and ensure that it is published within the 15 days following."

Thus modified, the final clause would read "The lead experts shall take all the necessary measures in ensuring that their respective States Parties respond to the questionnaire within the time period referred to in the previous paragraph, and ensure that it is published within the 15 days following."

TI also proposes that clause (g) of Article 25 of the Rules of Procedure be modified to replace "may" with "shall."

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

Recommendations for the Second Round

Over 8 years have passed since the IACAC entered into force and yet only 18 of the State Parties have been reviewed and, even then, the review has only covered a few of the Convention's many important provisions. TI has recommended repeatedly that the follow up process be accelerated. Decisions should be taken at the September meeting to ensure that the Second Round of country reviews starts promptly and moves ahead with all deliberate speed. TI urges the Committee to make decisions on the following:

1. Second Round reviews of the State Parties should commence directly following the final First Round reviews in March 2006 and no later than June 2006. Therefore, the Committee should select the Convention provisions to be reviewed in the Second Round, instruct the Secretariat to develop the questionnaire, circulate it for comment and call for responses to be submitted in time for the June 2006 starting date for Second Round reviews.

This preparatory work should not be postponed until after the first round is completed. For example, in the OECD Anti-Bribery Convention, Procedure of Self-and Mutual Evaluation, about the timing of Phase 2, the delegates agreed that Phase 2 should not be indefinitely postponed due to countries that may still be lagging in finalizing ratification and implementation of the Convention.

We recommend that a similar strategy be taken in developing the schedule for the Second Round.

It is critical that reviews of State Parties should not be delayed or sidetracked, and that the momentum for such visits does not slow down.

2. Provisions selected for the Second Round in 2006.

In accordance with the contents of Article 33(a) of the Rules, TI proposes that the following provisions be selected by the Committee for the second round:

- Article III N° 5) Systems of government hiring and procurement of goods and services that assure the openness, equity and efficiency of such systems;
- Article III N° 6) Government revenue collection and control systems that deter corruption.
- Article III N° 10) Deterrents to the bribery of domestic and foreign government officials, such as mechanisms to ensure that publicly held companies and other types of association 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.
- Article VI) acts of corruption which include bribery,
- Article VIII) transnational bribery,
- Article IX) illicit enrichment, and
- Article XI) progressive development, which includes improper use of information, traffic of influence, improper use of state property.

3. The Committee of Experts should accelerate the Follow-Up Process in the second round, by increasing the number of countries reviewed annually:

The pace of the First Round of the Follow-up process has undermined the impact of the Committee's work in the countries where reform must take place. The Committee's valuable work will only achieve its potential if the Committee proceeds on a more timely basis in the Second Round.

TI urges the Committee to increase the frequency of its meetings so that the Second Round is completed by December 31, 2008.

4. The Committee should provide for continued assessment of compliance with its First Round recommendations during the Second Round.

As stated in the first section, regular follow up of country compliance with the expert recommendations is key to the enforcement of the Convention. TI can accompany this process by feeding independent and specific information on country compliance into the follow up process.

5. The Committee of Experts Should Formalize Civil Society's Role in its Meetings.

TI has welcomed the opportunity to present written submissions and to make presentations to and exchange views with the Committee. We believe that the Committee and the State Parties have benefited from an independent and competent non-governmental perspective from within the country.

To date, presentations by civil society organizations (CSOs) to the Committee of Experts have been arranged on an informal basis and at the expense of the CSOs.

TI urges the Committee to recognize in its Rules the right of CSOs to make such presentations and the need to facilitate their input by providing the resources to enable their participation.

TI proposes that the second clause of Article 35 of the Rules be modified to replace "in informal meetings" with "within the framework of its meetings."

Thus modified, the second clause of Article 35 would read: "The Committee will invite duly accredited civil society organizations to give verbal presentations, within the framework of its meetings, of the documents they presented in accordance with the provisions in Article 33 (a) and (b) of these Rules."

We urge the Committee of Experts to consider the participation of CSOs as permanent observers of its work, which would bring about a real and effective application of Article VIII of the Report of Buenos Aires on the Participation of Civil Society and of Article III.11 of the Convention on mechanisms to stimulate the participation of CSOs and NGOs in preventing corruption.

TI thus proposes that Article 35 of the Rules be modified to add a third clause reading as follows: “Civil society organizations that request it may participate as observers in the meetings of the Committee of Experts. To do so, they must apply to the Committee Secretariat at least 30 days prior to the meeting.”

6. The Committee should conduct country visits to all reviewed States Parties in the Second Round.

On-site visits have been conducted under every other follow-up mechanism for multilateral anti-corruption agreements and have provided invaluable insights that cannot be obtained from written documents. The articles state that “The committee shall devise a method for the review of each provision, designed to ensure that sufficient reliable information will be obtained”. TI urges the experts to provide for on-site visits during the Second Round to assess compliance with First Round recommendations as well as provide a greater understanding of Second Round responses.

To operationalize these visits and ensure an effective follow-up, Article 32 should be modified to make visits by the members of the subgroups mandatory.

7. State Parties should be required to make a minimum annual contribution to support the Mechanism financially in order to demonstrate political commitment:

It is imperative that all States Parties to the Convention support the Mechanism financially. TI urges that each State Party make an annual contribution.

Conclusion:

We greatly appreciate the consideration by the Committee of Experts of these recommendations. We will be available to meet with the Committee to discuss these recommendations in more detail and answer any questions it might have.