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Peru: Civil Society Report by Proética

An input to the UNCAC Implementation Review Mechanism: First year of review of UNCAC chapters III and IV

-Executive Summary-

This is the executive summary of a Proética report¹ that reviews Peru's implementation and enforcement of selected articles in UN Convention against Corruption (UNCAC) Chapters III (Criminalization and Law Enforcement) and IV (International Cooperation). The report is intended as a contribution to the UNCAC peer review process of Peru covering those two chapters.

The UNCAC articles that receive particular attention in the report are those covering bribery (Article 15), foreign bribery (Article 16), embezzlement (Article 17), money laundering (Article 23), liability of legal persons (Article 26), witness protection (Article 32), whistleblower protection (Article 33), and mutual legal assistance (Article 46).

This report finds that some important steps in the fight against corruption have been taken in Peru, such as enacting a new Criminal Procedure Code and a new law on money laundering. Additionally, the Peruvian legal framework largely complies with the UNCAC articles reviewed for this report.

On the enforcement side, however, the report finds that the Peruvian state has been unable to successfully develop adequate capacity of enforcement authorities. There is a lack of independent, sufficiently resourced investigation and prosecution authorities and judiciary. The establishment and subsequent closure of the National Anti-corruption Office – in less than a year – is one of many examples of a clear lack of firm guidance and leadership on the part of the government regarding this issue. Further delays in processing corruption cases and imposing sanctions have created a sense of impunity in Peru.

It is important to note that on 28 July 2011 a new Peruvian government was inaugurated. The new government has shown a strong political will to fight against corruption and in the weeks following its inauguration some relevant announcements have been made. For example, there is a proposal that corruption crimes committed by public officials should not be subject to a statute of limitations. There is also an initiative to re-establish the anti-corruption prosecutor's office and to create a prosecutor's office for senior public officials. In this new context, much of the information detailed in this report refers to the previous political administration of Peru.

Assessment of the review process

Conduct of process

The following table provides an overall assessment of transparency, country visits and civil society participation in the UNCAC review of Peru.

¹ The full report is available at <http://www.uncaccoalition.org/en/uncac-review/cso-review-reports.html>. Its author is Marcela Huaita, Proética, and National Council for Public Ethics. A copy of the report was provided to the government and the final report will be used for continuing the dialogue and engagement with the stakeholders including the government beyond the first round country review process.

Table 1: Transparency and CSO participation in the review process

Did the government make public the contact details of the country focal point?	Yes
Was civil society consulted in the preparation of the self-assessment?	No
Was the self-assessment published online or provided to CSOs?	No
Did the government agree to a country visit?	Yes
Was a country visit undertaken?	No
Was civil society invited to provide input to the official reviewers?	Not yet
Has the government committed to publishing the full country report?	Unknown

Availability of information

Peru's legal framework is well developed, but there is not enough public information on the implementation and enforcement of UNCAC obligations. There are virtually no statistics available from the judiciary, office of the Attorney General, Ministry of Justice or any other public institution.

Findings on implementation and enforcement of the UNCAC

Overall, Peru has largely implemented the requirements provided in the convention articles under analysis in this report, except with regard to the liability of legal persons.

A key development is the entry into force of the new Criminal Procedure Code (the Code) for crimes related to bribery, extortion and embezzlement committed by public officials (law no. 29574 published 16 September 2010). This is important because the Code establishes fundamental principles such as: (1) prompt prosecution: cases can be decided within a few days or even a few hours if the offender admits guilt²; (2) record-keeping: all of the proceedings are transcribed and recorded on camera; and (3) transparency: the process is public. The new Code provides a fixed term for delivery of judgments, and in case of delay, the judge must inform the Office of Judicial Control (OCMA) of the reasons.

However, in recent years the government has reduced the number of staff dedicated to investigating and prosecuting corruption crimes, so there is a significant problem of procedural delays in the resolution of corruption cases. One of the main obstacles for implementing the Code is a lack of necessary funds for the judiciary, Public Ministry, Ministry of Justice and Ministry of Interior in order to implement the Code. In addition, there is a lack of training for judicial officers and insufficient infrastructure to implement the Code.

There is also some evidence of problems in the enforcement system including (1) apparent lack of priority given to corruption cases in law enforcement; and (2) concerns about independence of investigators, prosecutors or judiciary.

Recommendations for priority actions

1. Provide training on the implementation of the Code to all institutions in the anti-corruption system, especially the judiciary and the Public Prosecutor's Office.
2. Hire more staff, taking the caseload into consideration.
3. Increase the budget for responsible independent institutions (judiciary, Public Prosecutor's Office and Comptroller General's Office, among others) to enable them to effectively combat, prevent and punish corruption crimes at all levels.

² According to the new Code, the deadline is 140 days for investigating simple cases, and eight months for complex cases.

4. Implement a system to maintain records on corruption cases, so that statistics can be compiled on implementing and enforcing anti-corruption laws and regulations.
5. Foster awareness of anti-corruption issues within the general public in order to form a critical mass of citizens who are vigilant against acts of corruption.

The full Proética review report can be found at
<http://www.uncaccoalition.org/en/uncac-review/cso-review-reports.html>