FOLLOW-UP MECHANISM FOR THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
Thirty-third Meeting of the Committee of Experts
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Washington, D.C.

GUATEMALA

FINAL REPORT

(Adopted at the September 14, 2017 Plenary Session)
SUMMARY

This report contains the comprehensive analysis of the implementation in Guatemala of the recommendations in the report on the Second Round in relation to paragraphs 5 and 8 of Article III of the Inter-American Convention against Corruption that refer, respectively, to systems of government hiring and procurement of goods and services and systems for protecting public servants and private citizens who, in good faith, report acts of corruption, as well as the definition of acts of corruption provided in Article VI of the Convention, referring, where appropriate, to new developments related to the implementation of these provisions.

The report also includes the comprehensive analysis of the implementation in Guatemala of paragraphs 3 and 12 of Article III of the Convention that refer, respectively, to measures designed to create, maintain, and strengthen instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, as well as the study of study of further preventive measures that take into account the relationship between equitable compensation and probity in public service, which were selected by the MESICIC Committee of Experts for the Fifth Round, making reference also to the best practices reported by the State in connection with the implementation of the provisions selected for the Second and Fifth Rounds.

This review was conducted in accordance with the Convention, the Report of Buenos Aires, the Committee’s Rules of Procedure, and the methodologies it has adopted for conducting on-site visits and for the Fifth Round, including the criteria set out therein for guiding the review based on equal treatment for all states parties, functional equivalence, and the common purpose of both the Convention and the MESICIC of promoting, facilitating, and strengthening cooperation among the States Parties in the prevention, detection, punishment, and eradication of corruption.

The review relied principally on Guatemala’s response to the questionnaire and the information gathered during the on-site visit to Guatemala from April 9-11, 2019 by the representatives of Chile and Honduras. During that visit, with the support of the Technical Secretariat of the MESICIC, they were able to expand upon, clarify, and supplement the information provided by Guatemala, as well as to hear the opinions of civil society organizations, the private sector, and professional associations concerning the issues under examination.

Regarding the implementation of the recommendations made to Guatemala in the report on the Second Round, based on the methodology of the Fifth Round and taking account of the information provided in its response to the questionnaire and during the on-site visit, the Committee identified which of those recommendations were implemented satisfactorily, which require additional attention, which have been redefined, and which are no longer valid.

As regards government hiring systems, it is worth stressing the following: The adoption of Governmental Decision No. 185-2008, “Provisions regulating the implementation of human resource policy in Public Administration”; the implementation of the Human Resources Management I.T. System (SIARH); the adoption of the new Civil Service Law of the Legislative Branch and its Enabling Regulations; the amendment to the Organic Law of the Office of the Attorney General; and the Rules of Procedure for the Prosecutor’s Professional Career Service in the Office of the Attorney General.

In relation to government systems for the procurement of goods and services, it is worth highlighting the Government Procurement Law and its Enabling Regulations.

With regard to protection for government officials and others reporting acts of corruption: the issuance of the Manual on the Organizational Structure and Functions of the Protection Office (Decision No. 95-2013)
and the Security Protocol regarding threats, intimidation, or any other attitude posing a security threat or
danger, especially for magistrates or judges, and the setting up of an electronic link in the Judiciary’s
internal portal for filing denunciations and complaints.

With respect to criminal law definition of acts of corruption, the amendment to Articles 439, 442, 419, 449,
and 451 of the Criminal Code, so that they incorporate the elements of the acts of corruption contemplated
in Article VI.I of the Inter-American Convention against Corruption; and the inclusion of a definition of
government official, consistent with that given in the Convention, for the purposes of applying the Criminal
Code.

Some of the recommendations made to Guatemala during the Second Round that are still pending or which
have been re-phrased, have to do with such issues as adopting appropriate measures to achieve the
harmonization needed when dealing with various types of hiring systems; providing that, in the case of
posts included in the competitive category, the records of eligible candidates should contain an order of
preference based on scores obtained in the evaluation and the candidate with the highest score should be
chosen; establishing appeal remedies for challenging decisions taken during the selection process; adopting
suitable measures, via the corresponding authority, to ensure that municipalities comply with the obligation
established in Article 8 of the Enabling Regulations to the Government Procurement Law to post on the
Guatecompras website the information on their procurement and hiring activity required under that
 provision; adopting suitable measures, via the corresponding authority, to ensure that complaints filed by
users of the Guatecompras system are answered within the deadline set by law; and adopting via the
appropriate authority, comprehensive regulations regarding protection for government officials and private
citizens who, in good faith, report acts of corruption, including protection of their identity, in accordance
with the Constitution of the Republic of Guatemala and the fundamental principles of its domestic legal
system, to which end consideration could be given to the criteria established in the Model Law to Facilitate
and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses, which is
available on the Anticorruption Portal of the Americas.

In addition, with regard to new developments in Guatemala in the implementation of the Convention
provisions selected for the Second Round, the Committee recommended that it consider amending
Governmental Decision No. 185-2008, “Provisions for Regulating Implementation of Human Resources
Policy in Public Administration” to include the merit principle in its administrative policies for recruiting
human resources; issuing a Handbook of General Procedures for all stages of the process of recruiting and
selecting personnel for the Legislative Branch; including in the regulations governing public service in the
Office of the Attorney General a definition of government official (funcionario público) that is consistent
with the definitions of public servant and public service enshrined in the Convention; establishing a second
(higher instance) body for challenging decisions taken by the Awards Board after complaints have been
filed; adopting provisions regarding the processes required for limiting the ability of officials to use their
discretion to get round tenders or price quotation procedures for procurement by government dependencies
and entities, in cases provided for by Article 44.a of the current Government Procurement Law in respect
of circumstances resulting from states of emergency declared under the Public Order Law; and
strengthening the Protection Office, by endowing it, within available resources, with the human and
budgetary resources it needs to be able to fully perform the protection functions vested in it by the Law for
the Protection of Parties to Judicial Proceedings and Persons Involved in Administering Criminal Justice.

For the analysis of the first provision selected for the Fifth Round, which, as envisaged in Article III (3) of
the Convention, concerns instruction to government personnel to ensure proper understanding of their
responsibilities and the ethical rules governing their activities, in keeping with the methodology for this
round, the State under review chose the National Civil Service Office (ONSEC), the Legislative Branch,
and the Judicial Branch because it considers their institutional and normative developments to be relevant
and representative of the Republic of Guatemala’s entities and institutions as a whole.
This review sought to determine whether, in relation to those groups of personnel, provisions and/or measures have been adopted to ensure proper understanding of their responsibilities and the ethical rules that govern their activities, the manner and timing of that instruction, the programs envisaged for that purpose, the bodies with responsibilities in that regard, and objective results obtained from the application of those provisions and/or measures governing the activities of the personnel of the aforementioned institutions. At the same time it took note of any difficulties and/or shortcomings in accomplishing the object of that provision of the Convention.

Some of the recommendations put to Guatemala, for its consideration, regarding the above, have to do, in particular, with: adopting measures it deems appropriate for ensuring that all personnel in public administration, the Legislative Branch, and the Executive Branch, irrespective of their type of contract, are included in induction, re-induction, and ongoing training programs, as the case may be, including those designed to impart ethical values and raise awareness of the risks of corruption; adopting a code or handbook of ethical conduct specifically tailored to personnel in the Legislative Branch and, thereafter, implementing training programs specifically focusing on compliance with that ethical code or handbook and appointing authorities responsible for implementing the code or handbook and related training programs; strengthening ONSEC, the Legislative Branch, and the Judiciary, by endowing them with the human and budgetary resources needed for them to comply fully with their duty to instruct their personnel in such a way as to ensure that they have a proper grasp of their responsibilities and of the ethical standards governing their activities.

In keeping with the above Methodology, the review of the second provision selected for the Fifth Round, envisaged in Article III (12) of the Convention, sought to determine whether the State has studied preventive measures that take into account the relationship between equitable compensation and probity in public service and whether it has established objective and transparent criteria for determining civil servant remunerations. On that basis, it is recommended that the Government of Guatemala consider enacting a wage policy law establishing, at the very least, objective and transparent criteria for fair wages in the whole of the public sector.

Finally, the best practices reported by Guatemala refer, in short, to the National Census of Human Resources and Persons rendering technical and/or professional services in the Executive Branch and its decentralized entities, which was conducted by ONSEC in order to ascertain the number of public servants in the Executive and its decentralized entities, the cost involved, and where they are located; and the “Children’s Transparency Days” program run by the Office of the Comptroller General of Accounts, which “seeks to motivate, raise awareness, and trigger reflection on the importance of training children from their formative years to be guided by values, so that when they are grown-up citizens, who might eventually enter public or private office, they act with integrity to the benefit of Guatemalan society.”
INTRODUCTION

1. Content of the Report

[1] As agreed upon by the Committee of Experts (hereinafter “the Committee”) of the Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC) at its Twenty-fourth Meeting, this report will first refer to follow up on implementation of the recommendations formulated to the Republic of Guatemala in the report from the Second Round, which the Committee, in the Third Round report, found required additional attention.

[2] Second, where applicable, it will refer to new developments in the Republic of Guatemala with regard to the provisions of the Inter-American Convention against Corruption (hereinafter “the Convention”) selected for the Second Round, and regarding such matters as the legal framework, technological developments and results, and, if applicable, appropriate observations and recommendations will be formulated.

[3] Third, it will address the implementation, in the Republic of Guatemala, of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the MESICIC for the Fifth Round of Review. These provisions are as follows: Article III, paragraphs 3 and 12, regarding, respectively, the measures relating to “[i]nstruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities” and to “[t]he study of preventive measures that take into account the relationship between equitable compensation and probity in public service.”

[4] Fourth, it will refer to the best practices that the country under review wished to voluntarily share regarding the implementation of the provisions of the Convention selected for the Second and Fifth Rounds.

2. Ratification of the Convention and adherence to the Mechanism


I. SUMMARY OF THE INFORMATION RECEIVED

1. Response from the Republic of Guatemala

[7] The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Guatemala and in particular, from the Presidental Commission of Open Public Management and Transparency, which was evidenced, *inter alia*, in its reply to the questionnaire, in the constant willingness to clarify or complete its contents, as in the support provided for execution of the on-site visit referred to in the following paragraph. Together with its response, Guatemala sent the provisions and documents it considered pertinent.5

[8] The Committee also notes that the State under review granted its consent for an on-site visit, in keeping with provision 5 of the Methodology for Conducting On-Site Visits.6 That visit was conducted from April 9 to 11, 2019, by the representatives of Chile and Honduras, in their capacity as members of the Review Subgroup, with the support of the MESICIC Technical Secretariat. The information obtained during that visit is included in the appropriate sections of this report and the agenda for the visit is attached hereto, in accordance with provision 34 of the Methodology for Conducting On-Site Visits.

[9] For its review, the Committee took into account the information provided by Guatemala up to April 11, 2019, and that furnished and requested by the Secretariat and the members of the Review Subgroup to carry out its functions, in accordance with the Rules of Procedure and Other Provisions, the Methodology for Follow-up on the Implementation of the Recommendations Formulated and Provisions Reviewed in the Second Round and for the Analysis of the Convention Provisions Selected for the Fifth Round, and the Methodology for Conducting On-Site Visits.7

2. Documents and information received from civil society organizations and/or, inter alia, private sector organizations, professional organizations, and academics and researchers.

[10] The Committee also received, by the deadline set in the Schedule for the Fifth Round, documents of the Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption, presented by “Acción Ciudadana” (the Guatemala chapter of Transparency International), and remitted by those organizations pursuant to Article 34.b of the Committee’s Rules of Procedure.8

[11] Furthermore, in the course of the on-site visit conducted in the country under review from April 9 to 11, 2019, information was collected from other civil society and private sector organizations, professional associations, academics, and researchers invited to participate in meetings to that end, in keeping with the provisions contained in provision 27 of the Methodology for Conducting On-site Visits. A list of those persons is included in the agenda for that visit, which is appended hereto. Pertinent parts of this information are reflected in the appropriate sections of this report.

II. FOLLOW UP ON IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED IN THE SECOND ROUND AND NEW DEVELOPMENTS WITH REGARD TO THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THAT ROUND

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5 That response, and those provisions and documents may be consulted at:  
7 That information is available at:  
http://www.oas.org/juridico/spanish/mesicic5_chi.htm
8 This document was received by email on Tuesday, December 4, 2018, and is available at:  
http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_gtm.respuesta_soc_civil.pdf
[12] The Committee will now refer to progress made and new information and developments in the Republic of Guatemala with respect to the recommendations formulated and measures for their implementation suggested by the Committee in its Second Round report\(^9\) that were deemed to require additional attention in the reports of the Third Round,\(^10\) and it will proceed to take note of those that have been satisfactorily considered and those that require additional attention from the country under review. In addition, where appropriate, it will address the continued validity of those recommendations and measures and, as applicable, restate or reformulate them in accordance Section V of the Methodology adopted by the Committee for the Fifth Round.

[13] In this section, the Committee will, where applicable, take note of any difficulties indicated by the State under review with implementing the recommendations and measures alluded to in the foregoing paragraph and of any technical cooperation requested by the State in that connection.

[14] Second, where applicable, it will refer to new developments in Guatemala in respect of the provisions of the Convention selected for the Second Round regarding such matters as the regulatory framework, technological developments and outcomes, and will formulate any observations and recommendations that may be applicable.

1. SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES (ARTICLE III (5) OF THE CONVENTION)

1.1. SYSTEMS OF GOVERNMENT HIRING

1.1.1. Follow-up on implementation of the recommendations formulated in the Second Round

Recommendation 1.1.1:

*Strengthen government hiring systems in the executive branch.*

Measure a) suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

*Adopt appropriate measures to ensure the requisite harmony that the management of different public servant employment systems requires, taking into account, to that end, the principles of openness, equity and efficiency provided in the Convention.*

[15] In its response to the questionnaire,\(^11\) the State under review presented information on the above measure, of which the Committee notes the following:

[16] “After analyzing Recommendation 1.1.1 and measure a) suggested by the Committee, Guatemala considers that, comparing with the Second Round, current conditions persist in Guatemalan Public Administration, given that no harmonization has been achieved of the various regimes governing the hiring of public servants for agencies in the executive, legislative, and judicial branches of government and in the municipalities and each of them continues to be governed by its own Civil Service Law.

[17] As the Committee rightly points out on page 13 of its Final Report on the Thirteenth Meeting, the existence of a plurality of civil service regimes in Guatemala is a result of constitutional provisions, so that harmonizing them requires making specific amendments to the Constitution, repealing the current Civil Service laws, and issuing a single law applicable to the whole of the public sector.

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\(^9\) Available at: [http://www.oas.org/juridico/spanish/mesicic_II_inf_gtm_sp.pdf](http://www.oas.org/juridico/spanish/mesicic_II_inf_gtm_sp.pdf)

\(^10\) Available at: [http://www.oas.org/juridico/spanish/mesicic3_gtm_inf.pdf](http://www.oas.org/juridico/spanish/mesicic3_gtm_inf.pdf)

\(^11\) Response of Guatemala to the questionnaire for the fifth round, pp. 36 to 37.
[18] For that reason, ONSEC considers that, ideally, through the Office of the President of the Republic, consensus should be reached and shared criteria developed with senior authorities in the Legislature, Judiciary, and Municipalities for establishing a roadmap conducive to the above-mentioned amendments.”

[19] In this regard, the Committee notes that during the on-site visit the representatives of the National Civil Service Office (ONSEC) mentioned that three legislative initiatives were being developed, the third of which harmonized the first two and was just now being presented to Congress. They added that, as with any bill, the process takes time and it was impossible to know when it would be approved and in what final version.

[20] It is also worth noting that, in the analysis corresponding to the Third Round, following up on implementation of the recommendations formulated in the Second Round, the State under review pointed out, with respect to measure a) of the aforementioned recommendation that: One of several reasons why amendments are being made to the Civil Service Law, Congressional Decree No. 1748 of May 2, 1968, and its Regulations, Governmental Agreement No. 18-98 of January 15, 1998, is the fact that within the Guatemalan public administration, the three branches of government – executive, legislature, and judiciary – as well as various autonomous or decentralized entities have their own, unrelated human resource management regimes, and this impediment has given rise to the array of different human resource management methods that are found in the public sector. For that reason, the proposed amendments provide for complementarity among the regimes, in order to make better use of human resources within state agencies and to make these instruments mutually complementary; this can be achieved by signing agreements or other inter-institutional support documents that enshrine the principles of cooperation and collaboration while respecting the legitimate exercise by each agency of its own authority. – The proposed amendments to the current law are before Congress as bill 4142, and they have been passed by the Legislation and Constitutional Affairs Committee and by the Labor and Social Welfare Committee. The bill is currently awaiting its reading by the plenary of Congress of the Republic, at the first session in the period in which it is placed before that body”.

[21] Here, it is worth noting that, in the analysis corresponding to the Second Round, the Committee had the following to say regarding measure a) of the foregoing recommendation:13

[22] “While the Committee understands that the existence of special personnel administration systems may be rooted in the Constitution inasmuch as Article 108 thereof provides for the existence of such systems, it also believes that it would be advisable for the country under the review to consider the adoption of appropriate measures to ensure the requisite harmony that the management of different public servant employment systems requires, taking into account, to that end, the principles of openness, equity and efficiency provided in the Convention. The Committee will formulate recommendation in this regard”.

[23] Based on the foregoing, the Committee takes note of the difficulties mentioned by the State under review and of the need for it to continues giving further attention to implementing measure (e) of the above recommendation. (See recommendation 1.1.3.1 in Section 1.1.3 of Chapter II of this report.)

[24] At the same time, it should be noted that, during the on-site visit, representatives of the civil society organization “CEIDEPAZ” drew attention to the fact that:14

[25] “1. An outdated law exists, given the diversity of government institutions:
   • Centralized

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• Decentralized
• Autonomous
• Different State agencies”

[26] They added that “3. ONSEC’s authority is questioned when it comes to hiring, remuneration and salary scales, because of the variety of legal frameworks governing State institutions,” and that “There is an urgent need for participatory updating of the Civil Service Law,” and a need to standardize administrative careers and wages for all public administration personnel, including all State institutions and the municipalities.

[27] It should also be pointed out that the civil society organization “Acción Ciudadana” stated in the parallel document presented in connection with Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC (hereinafter “the parallel document”), inter alia, that:15

[28] “The Civil Service Law and its enabling regulations, promulgated in 1968 and 1998, respectively, govern the hiring of government officials and personnel of the Executive Branch, rendering the system for hiring Executive Branch staff inefficient. No concrete measures have thus been reported with respect to implementation of this measure. “Several experts have stated that the Civil Service Law is irreparable and should be dispensed with in its entirety, and replaced by a new law” https://www.prensalibre.com/hemeroteca/ley-del-servicio-civilisin-cambios-en-48-aos).”

Measure b) suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

Adopt appropriate measures to make the provisions on publication of calls for candidates for vacant competitive positions contained in Article 18 of the Regulations of the Civil Service Law consistent with the provisions in that respect set forth in Article 45 of the Civil Service Law; so as to make clear the obligation to observe the time limit set by the latter article for said publication, in addition to the requirement to do so, whatever the case, in the Official Gazette and in another broadly distributed newspaper, without prejudice to the possibility of resorting to such other communication mechanisms as may be deemed appropriate.

[29] In its response and during the on-site visit, the State under review presented information and reported new developments in relation to the above measure. In that regard, the Committee notes the following as steps that contribute to progress in its implementation:17


[31] “As of 2011, the provisions regulating the requirement to publish job announcements pursuant to Article 45 of the Civil Service Law and Article 18 of its enabling regulation were included in the Government Decision approving the Annual Wages and Salaries Plan and the rules governing its implementation.”

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17 Response of Guatemala to the questionnaire for the fifth round, pp. 17 to 19.
18 Available at: http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_gtm_anexo13.pdf
[32] - Instructions governing the Process for Comparing Certificates of Academic Achievement and Specialties and Legal Requirements of the ONSEC Department responsible for Selecting and Evaluating Human Resources.19


[34] - The creation within ONSEC, in 2017, of the Administrative Career Directorate as the body responsible for taking steps to guarantee and promote the entry, retention, and development of public servants within the Administrative Career System established for institutions pertaining to the Executive Branch and those governed by the Civil Service Law and these Regulations.


[36] - In light of the above, the Committee takes note of the steps taken by the State under review to implement measure (b) of the foregoing recommendation and the need for it to continue to give attention thereto for the following reasons:

[37] - First, the Committee wishes to point out that measure (b) of the foregoing recommendation originates from the analysis in the Second Round, in which the Committee made the following observations22:

[38] “In second place, the Committee notes that Article 45 of the Civil Service Law provides that calls for candidates shall be published at least 15 days before the date set by the National Civil Service Office for the examination by the means that it considers most appropriate, and that at all events the notice shall be published in the Official Gazette and in one other broadly distributed national newspaper. However, Article 18 of the Regulations of that Law does not mention the aforesaid time limit for publication of calls for candidates or the obligation that it be published in the Official Gazette and in another broadly distributed national newspaper; it merely states in that respect that the aforementioned Office, through ministries and departments of the executive branch, shall invite persons interested to participate in the examination for vacancies in competitive positions through such communication mechanisms as it deems appropriate.

[39] “With respect to the foregoing, the Committee considers that it would be advisable for the country under review to consider the adoption of appropriate measures to make the provisions on publication of calls for candidates for vacant posts in competitive positions contained in Article 18 of the Regulations of the Civil Service Law consistent with the provisions in that respect set forth in Article 45 of the Civil Service Law, so as to make clear the obligation to observe the time limit set by the latter article for said publication, in addition to the requirement to do so, whatever the case, in the Official Gazette and in another broadly distributed newspaper, without prejudice to the possibility of resorting to such other communication mechanisms as may be deemed appropriate”.

19 Referred to in the response to the questionnaire as the “Employment Management Manual.” Available at: https://drive.google.com/file/d/14KUnqbjH6ha-GDheKrN4JpdgHZwvGJx/view
20 Available at https://drive.google.com/file/d/14KUnqbjH6ha-GDheKrN4JpdgHZwvGJx/view
22 Report on Guatemala from the Second Round, pp. 13 and 14;
Here the Committee observes that no amendment has been made to the Rules of Procedure of the Civil Service Law (RLSC) with a view to aligning the provisions of Article 18 with those of Article 45 of the Civil Service Law (LSC), as suggested by the Committee in the Second Round report.

The Committee further notes that, in both its reply to the questionnaire and during the on-site visit, the State under review, mentioned the following difficulties ascertained during implementation of the measure contained in the above recommendation:

- "Limitations derived from expenditure constraints imposed by the Office of the President of the Republic due to tax collection issues, as a factor curtailing publication of job vacancies in the media.

- Rotation of Human Resource Directors in institutions pertaining to the Executive Branch, who are given training and counseling on personnel recruitment and selection, due to their being hired under temporary budgetary arrangements.

The organizational culture of the Public Sector is also adversely affected. Administrative practices develop that derive from a public administration model in which employment constitutes political booty and hamper implementation of provisions relating to the openness of information."

Bearing the foregoing in mind, and without prejudice to such recommendations as may be formulated below in Sections 1.1.2 and 1.1.3 of Chapter II of this report, with respect to personnel selection processes in the Executive Branch, the Committee takes note of the steps taken by the State under review, of the difficulties it has highlighted, and of the need for it to continue to give attention to implementing the above measure. (See recommendation 1.1.3.2 in Section 1.1.3 of Chapter II of this report.)

It should also be pointed out that the civil society organization “Acción Ciudadana” stated in the parallel document presented in connection with Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC, inter alia, that:

- “The National Civil Service Office reports progress with establishing new guidelines for human resource oversight and organization, via an I.T.-based and structural modernization process designed to ensure that citizens get to hear of vacancies and can apply in a transparent manner. (https://dca.gob.gt/noticias-guatemala-diariocentro-america/trabajan-en-mejorar-controles-en-la-onsec/).

Nevertheless, that modernization has not guaranteed a reduction in electoral commitments by parties and candidates to offer government jobs to like-minded people regardless of quality, functions, or efficiency. According to Prensa Libre, in the three years since the current government was elected, 21,733 new jobs have been created, with no information yet forthcoming on the findings of the census of government employees.(https://www.prensalibre.com/guatemala/politica/gestionde-jimmy-morales- ha-creado-21-mil-plazas-en-el-gobierno)."

The Committee further notes that ONSEC’s Employment Manual has yet to be posted on the Office’s website. The Committee believes that it would be appropriate for the State under review to consider posting it on the portal and will make a recommendation to that effect. (See recommendation 1.1.3.3 in Section 1.1.3 of Chapter II of this report.)

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23 Response of Guatemala to the questionnaire for the Fifth Round, p. 42.
http://www.oas.org/es sla/dlc/mesicic/docs/mesicic5_gtm_respuesta_soc_civil.pdf
In this regard, the Committee notes that during the on-site visit representatives of the “Guatemala Visible” civil society organization pointed to a lack of openness and transparency in public administration selection processes in general and to the need to publicize laws and regulations.

Measure c) suggested by the Committee, which requires additional attention, as envisaged in the Third Round report:

Adopt provisions that require the appointing authority to take into account the order of scores attained by eligible candidates in the competition held in the framework of the merit-based civil service admissions system, in order to select the one who should occupy the position to be filled.

In its response, the State under review presents information and new developments with respect to the above measure. In this regard, the Committee notes the following as a step that contributes to progress in its implementation:

The Employment Management Module of the SIARH also has an app called Selection Management to facilitate the systematized handling of the personnel recruitment and selection process. That app records the results of the evaluations of each candidate and comes up with a final score, because it is based on parameters containing the evaluation factors and their weightings. Consequently, for each specific vacancy announcement, it is possible to rank the scores of eligible candidates, from highest to lowest, thereby enabling the Nominating Authority to select the best candidate for the position in question.

Nevertheless, the Committee notes that during the on-site visit, ONSEC representatives pointed out that no provision had yet been adopted requiring the nominating authority to take into account the ranking of qualifications obtained by eligible candidates in the competitive process and thereby ensure that the candidate with the highest qualifications is selected for the position, although a bill amending the Civil Service Law had been presented to Congress.

In that connection, in both its response to the questionnaire and during the on-site visit, the State under review mentioned the following difficulties with implementing measure c) of the above recommendation:

Implementing this recommendation has been hampered by factors very similar to those indicated in the foregoing section, such as the rotation of Human Resource Directors in institutions pertaining to the Executive Branch and the organizational culture of the public sector, which give rise to administrative practices that make it difficult to implement the provisions calling for openness in information and that are proper to a public administration model in which employment may constitute political booty.

In this regard, it is worth recalling that measure (c) of the foregoing recommendation stems from the analysis in the Second Round, in which the Committee made the following observation:

Third, the Committee observes that though Article 48 of the Civil Service Law and, in similar fashion, Article 22 of its Regulations provide that the names of the persons who pass examinations shall be entered in the admission and promotion registers of the National Civil Service Office in descending order of the scores attained, both Article 50 of said Law and Article 29 of its Regulations, permit the appointing authority to choose the new servant from the roll of eligible candidates presented to it by the director of the aforesaid Office, without mentioning the requirement that this selection process take the order of the scores obtained into account.

25 Response of Guatemala to the questionnaire for the Fifth Round, p. 43.
[58] “With respect to the foregoing, in light of the principle of equity provided in the Convention, and bearing in mind, furthermore, that the aforementioned articles contained in the Civil Service Law and its Regulations refer to a merit-based civil service admissions system, the Committee is of the opinion that the country under review should consider adopting provisions that require the appointing authority to bear in mind the order of scores attained by eligible candidates in the competition, in order to select the one who should occupy the position to be filled.”

[59] Based on the foregoing, the Committee takes note of the action undertaken by the State under review, of the difficulties it refers to, and of the need for it to continue giving further attention to implementing measure (e) of the above recommendation. (See recommendation 1.1.3.4 in Section 1.1.3 of Chapter II of this report.)

[60] It should also be pointed out that the civil society organization “Acción Ciudadana” stated in the parallel document presented in connection with Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC, inter alia, that: “There are no reports of steps taken to implement the recommendation.”

Measure (d) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

Adopt appropriate measures to guarantee the effectiveness of the merit-based civil service admissions system by ensuring the use, wherever appropriate, of the competitive examination selection process, in accordance with statutory provisions.

[61] In its response, the State under review did not refer to measure (d) of the above recommendation. Nevertheless, the Committee would like to point out that this measure stems from the analysis contained in the outcomes section of the report of the Second Round, in which the Committee formulated the following observation:

[62] “The Committee considers that the foregoing information serves to establish that the National Civil Service Office has carried out the evaluations mentioned in the first of the aforementioned statistical tables and that the Office has records on the number of positions in the entities mentioned in the two other statistical tables.

[63] “The country under review also included the following comments in its response to the Questionnaire:

[64] “The National Civil Service Office manages the human resources database, from which it is possible to supply, on request, the executive branch with candidates who are eligible to occupy positions in the public administration, in order to facilitate admission to competitive positions. However, it is important to mention that as a result of political interference, the number of candidates hired by the competitive examination process has declined in comparison to the numbers hired by noncompetitive processes, thus limiting merit-based admissions to the civil service.”

[65] “In light of the foregoing, the Committee believes that the country under review should consider adopting appropriate measures to guarantee the effectiveness of the merit-based civil service admissions system by ensuring the use, wherever appropriate, of the competitive examination selection process, in accordance with statutory provisions”.

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29 Response of Guatemala to the questionnaire for the Fifth Round, p. 22.

Accordingly, and bearing in mind that Section 1.1.3 of Chapter II of this report contained an updated and detailed analysis of the results presented by Guatemala with respect to its systems for hiring public servants in the Executive Branch, the Committee welcomes the contents of said Section and therefore considers that this measure is redundant.

RECOMMENDATION 1.1.2:

Strengthen government hiring systems in the legislative branch.

Measure (a) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

Harmonize the provisions regarding the qualifications and experience required for entry into the legislative branch with the rules established by the other systems for admission to public service in force in the country that have been examined in this report, thereby ensuring that uniform criteria are applied to such matters.

During the on-site visit, the State under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as a step that contributes to its satisfactory implementation:

Adoption of Decree Number 36-2016 of the Congress of the Republic issuing the new Civil Service Law of the Legislative Branch, Article 37 of which reads as follows: “Indispensable requirements for entry into the civil service: Those interested in entering the Civil Service System of the Legislative Branch must be Guatemalan citizens, entitled to full enjoyment and exercise of their rights. They may not be legally disqualified, nor be relatives within the degrees of consanguinity or affinity established by law, of members of the chamber of deputies or of persons working in the Legislative Branch, and they must show proof of the experience, knowledge, and other requisites established in the present law, its enabling regulations, the corresponding manuals, and respective vacancy announcements.”

In this regard, the Committee wishes to point out that measure (a) of the foregoing recommendation stems from the analysis in the Second Round, in which the Committee made the following observation:

“First, the Committee observes that Article 17 of the Civil Service Law of the Legislative Branch stated that it shall not be necessary to submit criminal and police records when exercising the right to apply for a job in the Legislature.

Here it should be pointed out that all other systems in the State under review for entry into public service, examined in this report, provide for the submission of background records.

In that regard, and bearing in mind that one of the purposes of the Convention is to prevent corruption, the Committee considers that it would be advisable for the country under review to consider standardizing the requirements regarding submission of background reports based on the provisions found in the other public service entry systems, so that uniform criteria are applied.”

In this regard, the Committee notes that the new Civil Service Law for the Legislative Branch no longer contains the exemption from submission of criminal and police background reports found in former Article 17. Likewise, the Committee observes that Article 37 establishes as a requirement for entry into public service the absence of any legal disqualification, which implies submission of the aforementioned background records and is consistent with the provisions of the other public service entry systems in other government agencies and institutions.
Based on the foregoing, and without prejudice to any recommendations that may be formulated below in the section on outcomes and new developments, the Committee takes note of the satisfactory consideration given to measure a) of the above recommendation.

Measure (b) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:
*Expedite the adoption of the Manual of General Procedures and Standards referred to in Articles 4 and 11 of the Regulations of the Civil Service Law of the Legislative Branch, taking into account, to that end, the principles of openness, equity and efficiency provided in the Convention, and include therein rules on aspects concerning the selection procedure to occupy a competitive position as well as on publication, disclosure and voiding of the call for candidates.*

Regarding measure b) of the above recommendation, the Committee notes that it referred to the provisions contained in the former Rules of Procedure of the Civil Service Law of the Legislative Branch of 1987, which have since been repealed, and that, in 2017, Decision No. 9-2017 was issued, establishing the new Rules of Procedure of the Civil Service Law of the Legislative Branch, which are those now in effect.

That being so, and without prejudice to the recommendations made in Section 1.1.2 of Chapter II of this report, which will contain an updated and detailed analysis of current legislation with regard to mechanisms for selecting personnel to work in the Legislature, including provisions on the publication and dissemination of vacancy announcements, the Committee reaffirms the contents of that section and considers that said measure has ceased to be relevant.

Measure c) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:
*Adopt provisions, in the case of competitive positions, that require an order of preference to be established in registers of eligible candidates, in keeping with their scores in the evaluation, and that the candidate with the best evaluation should be selected.*

In its response, the State under review presented information regarding measure c) of the above recommendation, and pointed out, in particular, that:

“*The competitive selection process is conducted in accordance with the Law and established procedures and through intervention in the procedure and measures [así como ejecutando incidencia en el procedimiento y medidas].”*

At the same time, the Committee notes that, during the on-site visit, representatives of the legislative branch pointed out that no provision had been issued requiring, for competitive positions within the service, the establishment of an order of preference in the lists of eligible candidates based on their evaluation scores and selection of the candidate with the highest score. The Committee further notes that both the new Civil Service Law of the Legislative Branch of 2016 and its Rules of Procedure likewise omit any such requirement.

Based on the foregoing, the Committee takes note of the need for the State under review to pay additional attention to implementing measure c) of the above recommendation. (See recommendation 1.1.3.5 in Section 1.1.3 of Chapter II of this report.)

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[81] It should also be pointed out that the civil society organization “Acción Ciudadana” stated in the parallel document presented in connection with Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC, inter alia, that: “No information or new development exists in this regard.”

Measure (d) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:
Set a maximum time-limit for the provisional, emergency, or temporary appointments referred to in Article 17 of the Regulations of the Civil Service Law of the Legislative Branch.

[82] Regarding measure d) of the above recommendation, the Committee notes that it referred to the provisions contained in the former Rules of Procedure of the Civil Service Law of the Legislative Branch of 1987, which have since been repealed, and that, in 2017, Decision No. 9-2017 was issued, establishing the new Rules of Procedure of the Civil Service Law of the Legislative Branch, which are those now in effect.

[83] That being so, and without prejudice to the recommendations made in Section 1.1.2 of Chapter II of this report, which will contain an updated and detailed analysis of current legislation with regard to mechanisms for selecting personnel to work in the Legislature, including provisions on the publication and dissemination of vacancy announcements, the Committee reaffirms the contents of that section and considers that said measure has ceased to be relevant.

Measure (e) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:
Introduce mechanisms to challenge decisions adopted in the selection process.

[84] In its response to the questionnaire, the State under review presented information on the above measure, of which the Committee notes the following:


[86] In this regard, the Committee observes that Article 98, which the State under review refers to, is placed specifically in Chapter II, “Sanctions,” of the new Civil Service Law of the Legislative Branch, adopted in 2016 through Decree No. 36-2016 and provides as follows:

[87] “A motion for reconsideration is allowed against resolutions issued by the Directorate of Human Resources. It must be filed within five days of the day of notification of the contested resolution, in writing, with the Directorate of Human Resources, which shall forward it to the appropriate body within two days of submission of the motion. In cases involving sanctions for both minor and serious infringements, the motion for reconsideration shall be examined by the Office of the Director General, whereas sanctions for very serious infringements shall be examined by the Governing Board (Junta Directiva).”

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http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_gtm_respuesta_soc_civil.pdf
33 In a document submitted on August 12, 2019, the State under review offered the following comment: “On this, I would like to let you know that at the end of the personnel selection process, a list is drawn up in descending order of eligible candidates who received a score of 75 or more points. That list is submitted to the Governing Board, which chooses the winner of the competitive process based on the following factors: score obtained, performance during the interview, and the specific skills required for the position.”
34 Response of Guatemala to the questionnaire for the Fifth Round, p. 33.
Here, the Committee observes that the aforementioned motion for reconsideration refers specifically to challenges to resolutions issued by the Directorate of Human Resources related to sanctions and has nothing to do with appeals or challenges relating to the various stages in the processes for selecting personnel to work in the Legislature.\[35\]

In this regard, the Committee wishes to point out that measure contained in the foregoing recommendation dated back to the Second Round, in which the Committee made the following observation:

“Fifth, the Committee notes that neither the Civil Service Law of the Legislative Branch nor its Regulations, offer any challenge mechanisms against decisions adopted in the selection process governed by these standards. The Committee believes that the existence of such challenge mechanisms would help to ensure the effectiveness of the aforesaid process and, therefore, it will formulate a recommendation to the country under review to the effect that it consider its introduction”.\[36\]

In light of all of the above, the Committee notes the need to pay attention to implementation of measure e) of the above recommendation as well as the need to re-frame it for the sake of greater clarity. (See Recommendation 1.1.3.6 in Chapter II, Section 1.1.3, of this report.)

**RECOMMENDATION 1.1.3:**

Strengthen government hiring systems in the judicial branch.

Measure a) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:
Identify in the text of the Civil Service Law of the Judicial Branch the positions that would come under the competitive examination system, or the inclusion of a provision therein to the effect that the competitive examination system shall be deemed to cover all posts not classed as subject to free appointment and removal in accordance with Article 13 of the aforesaid law, without making the foregoing subject to the requirement that they be specifically included in the competitive examination system in the Manual mentioned therein.

During the on-site visit, the State under review reported that no legislative amendment of the Civil Service Law of the Judiciary had been carried out. At the same time, it pointed in its response to the following difficulty with implementing measure a) of the above recommendation: “Potentially, the main difficulty might have to do with defining the civil service regime applicable to new positions.”\[37\]

In this regard, the Committee wishes to point out that measure (a) of the foregoing recommendation dates back to the analysis in the Second Round, in which the Committee made the following observation:

“First, the Committee notes that Article 12 of the Civil Service Law of the Judicial Branch provides that the competitive examination system refers to the procedure for appointments to positions with permanent duties that are described as such, specifically in the Positions and Salaries Classification and Evaluation Manual in the Judicial Branch.”

\[35\] In a document submitted on August 12, 2019, the State under review offered the following comment: “Article 98 of the Civil Service Law (Decree No. 36-2016) does indeed refer to challenges and resolutions of the Directorate of Human Resources with respect to sanctions processes within the Legislative Branch. “So that, given the absence of proper regulations governing the right to file an appeal challenging the resolution or the process used to announce vacancies within the Legislative Branch, and in order to protect competitors’ rights, by analogy the motion for reconsideration established in Article 98 of the aforementioned law is taken and accepted.”\[36\]


\[37\] Response of Guatemala to the questionnaire for the Fifth Round, p. 36.
“With respect to the foregoing, the Committee is of the opinion that, in light of the principle of equity provided in the Convention, and bearing in mind, moreover, that Article 12 of the Civil Service Law of the Judicial Branch refers to a merit-based civil service admissions system, the country under review should consider the identification in the text of said law of the positions that would come under the competitive examination system, or the inclusion of a provision therein to the effect that the competitive examination system shall be deemed to cover all posts not classed as subject to free appointment and removal in accordance with Article 13 of the aforesaid law, without making the foregoing subject to the requirement that they be specifically included in the competitive examination system in the Manual mentioned therein. The Committee believes that this would ensure the appropriate stability of a merit-based civil service admissions system, inasmuch as the determination of the posts included in the system would not be subject to the modifications that may be easily made to the aforesaid Manual.”

Based on the foregoing, the Committee takes note of the difficulties mentioned by the State under review and of the need for it to continue giving further attention to implementing measure (a) of the above recommendation. (See recommendation 1.1.3.7 in Section 1.1.3 of Chapter II of this report.)

Measure b) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:
Set a deadline for publication of calls for candidates to fill positions under the competitive examination system referred to at Article 17 of the Civil Service Law of the Judicial Branch, so that this is done sufficiently in advance of the start of selection processes, as well as precisely identify the mechanisms to be used for their disclosure.

The country under review provided the following information in its response:

“So far no amendment to the law has been passed to determine or establish a deadline for the publication of vacancy announcements. It has been left to the authorities to set those deadlines.

Nevertheless, an established procedure does exist for drafting those announcements and publishing them, once they have been authorized by the authorities. They are published in writing, on the billboard located in the corridor in the Human Resource Endowment Unit, via the Intranet, and in social media.”

In this regard, the Committee wishes to point out that measure (b) of the foregoing recommendation dates back to the analysis in the Second Round, in which the Committee made the following observation:

“Second, the Committee notes that though Article 17 of the Civil Service Law of the Judicial Branch provides that a policy of open calls for candidates shall be followed in filling positions under the competitive examination system, designed to recruit the best candidates through adequate disclosure, there is no deadline set between the publication of the call for candidates and the start of the selection process, nor are the mechanisms to be used for its disclosure precisely identified. The Committee believes that the introduction of such a deadline as well as a precise identification of the aforementioned disclosure mechanisms, would help to ensure the effectiveness of the call for candidates in the selection process and therefore, it will formulate a recommendation to the country under review to the effect that it consider their introduction”.

In light of the above, the Committee notes the need to continue paying attention to implementation of measure b) of the above recommendations, particularly since no deadline has been set for publishing

39 Response of Guatemala to the questionnaire for the Fifth Round, p. 37.
announcements of competitive position vacancies, and the media to be used to publish them have not been specified. (See Recommendation 1.1.3.8 of Section 1.1.3 of Chapter II of this report.)

Measure c) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

Introduce a provision, with respect to positions in the competitive system referred to at Article 30 of the Civil Service Law of the Judicial Branch, that makes it a requirement, in selecting the person to occupy the vacant post, to take into account the order of scores obtained by the candidates in the competition.

In its reply, the State under review presented information it deems relevant to implementation of measure c) in the foregoing recommendation, including the following that the Committee wishes to highlight:

- “The Nominating Authority is given a list of the names of eligible candidates (those that have successfully passed the recruitment process), in order for said Authority to decide who shall occupy the position, based, among other considerations, on the candidate’s qualifications.”

- “Current difficulties with filling vacancies stem from the shortage of candidates. There are not enough staff in the Endowment Unit to attend to current demand.”

On the other hand, the Committee notes that during the on-site visit, representatives of the Judiciary pointed out that the Civil Service Law of the Judiciary had not been amended and no measures had been adopted to establish that, for the competitive regime positions referred to in Article 30 of the Civil Service Law for the Judiciary, consideration must be given to the qualification scores obtained by candidates in the competition for selecting the candidate to fill the vacancy.

In this regard, the Committee wishes to point out that measure (c) of the foregoing recommendation dates back to the analysis in the Second Round, in which the Committee made the following observation:

“Third, the Committee notes that Article 20 of the Civil Service Law of the Judicial Branch and Article 17 of its Regulations provide that eligible candidates shall be entered in a register and that the Human Resources System is responsible for their placement in strict descending order of their test scores and that when requested by the appointing authority, the aforesaid system shall forward a list of the 10 highest-scoring candidates, in descending order. However, both Article 30 of the aforesaid Law and Article 17 of its Regulations permit the appointing authority to appoint the new servant based on a recommendation from the immediate superior of the competitive position to be filled as to the eligible candidate whom they consider best suited for the post, without stipulating that this selection take into account the order of scores obtained by those candidates.

With respect to the foregoing, the Committee is of the opinion that, in light of the principle of equity provided in the Convention, and in order to ensure the effectiveness of the merit-based civil service admissions system, the country under review should consider, with respect to positions to be filled through the competitive examination system, the introduction of a provision that makes it a requirement, in selecting the person to occupy the vacant post, to take into account the order of scores obtained by the candidates in the competition.”

Based on the foregoing, the Committee takes note of the need for the State under review to pay additional attention to implementing measure c) of the above recommendation. (See recommendation 1.1.3.9 in Section 1.1.3 of Chapter II of this report.)

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41 Response of Guatemala to the questionnaire for the Fifth Round, p. 38.
42 Report on Guatemala from the Second Round, p. 16.
Measure (d) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

*Introduce mechanisms to challenge decisions adopted in the selection processes governed by the Judicial Career Law and the Civil Service Law of the Judicial Branch.*

[111] In its response to the questionnaire, the State under review provided the following information:43

[112] “The recruitment process does not provide for any kind of specific appeal, particularly since that process is confidential (Article 21 of the Rules of Procedure of the Civil Service Law of the Judiciary) and the law applies solely and exclusively to already employed personnel [personal que es laborante].”

[113] In this regard, the Committee wishes to point out that measure (d) of the foregoing recommendation dates back to the analysis in the Second Round, in which the Committee made the following observation:

[114] “Fourth, the Committee observes that neither the Judicial Career Law, nor the Civil Service Law of the Judicial Branch, offer any challenge mechanisms against decisions adopted in the selection processes governed by these laws. The Committee believes that the existence of such challenge mechanisms would help to ensure the effectiveness of the aforesaid processes and, therefore, it will formulate a recommendation to the country under review to the effect that it consider their introduction.”44

[115] Based on the foregoing, the Committee takes note of the need for the State under review to pay additional attention to implementing measure d) of the above recommendation, which will be re-framed for the sake of greater clarity. (See recommendation 1.1.3.10 in Section 1.1.3 of Chapter II of this report.)

**RECOMMENDATION 1.1.4:**

*Strengthen government hiring systems in the Office of the Attorney General.*

Measure a) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

*Expedite the adoption of the regulations governing the administrative staff career system provided at Article 59 of the Organic Law of the Office of the Attorney General, taking into account, to that end, the principles of openness, equity and efficiency enshrined in the Convention.*

[116] The Committee notes that, during the on-site visit, representatives of the Office of the Attorney General (Ministerio Público) pointed out that:45


[118] In this regard, the Committee wishes to point out that measure (a) of the foregoing recommendation dates back to the analysis in the Second Round, in which the Committee made the following observation:

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43 Response of Guatemala to the questionnaire for the Fifth Round, p. 39.
44 Report on Guatemala from the Second Round, p. 16.
“First, the Committee notes that although Article 59 of the Organic Law of the Office of the Attorney General states that the Attorney General of the Republic shall adopt regulations governing the administrative staff career system, according to information supplied by the country under review in this respect, those rules have yet to be adopted. Accordingly, the Committee will formulate a recommendation to the effect that it consider their prompt adoption, taking into account, to that end, the principles of openness, equity and efficiency enshrined in the Convention”.

Here, the Committee notes that the Organic Law of the Office of the Attorney General (Decree No. 40-94), analyzed during the Second Round and Article 76 of which prompted the measure referred to in the above recommendation, was amended by Decree No. 18-2016, published on March 18, 2016. As a result of that amendment, the aforementioned Article 76 was repealed.

That being so, and without prejudice to the recommendations made in Section 1.1.2 of Chapter II of this report, which will contain an updated and detailed analysis of current legislation with regard to mechanisms for selecting personnel to work in the Office of the Attorney General, the Committee reaffirms the contents of that section and considers that said measure is now redundant.

Measure b) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:
Set a deadline for publication of calls for candidates to fill positions in the Office of the Attorney General referred to in Article 76 of the Organic Law of the Office of the Attorney General, so that this is done sufficiently in advance of the start of selection processes, as well as precisely identify the mechanisms to be used for their disclosure.

As regards measure b), the Committee notes that the Organic Law of the Office of the Attorney General (Decree No. 40-94), analyzed during the Second Round and Article 76 of which prompted the measure referred to in the above recommendation, was amended by Decree No. 18-2016, published on March 18, 2016. As a result of that amendment, the aforementioned Article 76 was repealed.

That being so, and without prejudice to the recommendations made in Section 1.1.2 of Chapter II of this report, which will contain an updated and detailed analysis of current legislation with regard to mechanisms for selecting personnel to work in the Office of the Attorney General, the Committee reaffirms the contents of that section and considers that said measure is now redundant.

Measure c) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:
Introduce mechanisms to challenge decisions adopted in the selection processes governed by the Organic Law of the Office of the Attorney General (in addition to that provided at Article 77 to challenge the inclusion of a candidate in the merit list), including decisions on evaluation results and non-inclusion of candidates in said list.

The State under review provided the following information in its response:

“Pursuant to Article 28 of the Political Constitution of the Republic of Guatemala, “Right to Petition,” the Office of the Attorney General hears administrative appeals and other actions brought under

our legal system to contest the incompatibilities established in Article No. 77, “Disqualifications and Incompatibilities,” of the Organic Law of the Office of the Attorney General, Decree 40-94 of the Congress of the Republic, several of which have been heard and resolved in accordance with Law; however, the legal order governing the Office of the Attorney General⁴⁹ does not provide for any specific procedure or special mechanism for challenging decisions.⁵⁰

[126] In this regard, the Committee wishes to point out that measure (c) of the foregoing recommendation dates back to the analysis in the Second Round, in which the Committee made the following observation:

[127] “Third, the Committee notes that although Article 77 of the Organic Law of the Office of the Attorney General provides that any individual or organization of persons may challenge the inclusion of a candidate in the merit list to be drawn up in the wake of the competition, on the grounds that they do not meet the requirements to occupy the position; however, no challenge mechanism is provided against any other decisions adopted in the selection process, such as the results of the evaluations or non-inclusion of candidates in the list. The Committee believes that the existence of such challenge mechanisms would help to ensure the effectiveness of the aforesaid process and, therefore, it will formulate a recommendation to the country under review to the effect that it consider their introduction.”⁵¹

[128] In this regard, the Committee notes that Article 77 of the aforementioned Organic Law of the Office of the Attorney General, which established a specific procedure for challenging decisions by the Competitive Entry tribunals, was repealed as a result of the amendment to the law contained in Decree No. 18-2016, published on March 18, 2016.⁵²

[129] That being so, and without prejudice to the recommendations made in Section 1.1.2 of Chapter II of this report, which will contain an updated and detailed analysis of current legislation with regard to mechanisms for challenging the processes for selecting personnel to work in the Office of the Attorney General, the Committee reaffirms the contents of that section and considers that said measure is now redundant.

RECOMMENDATION 1.1.5:

Strengthen government hiring systems in municipalities

Measure a) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

Adopt, through the appropriate authority, the measures necessary to bring into operation the Municipal Human Resources Advisory Office, created at Article 8 of the Municipal Service Law for the application of said Law, and to supply it with the resources required for that purpose.

[130] The State under review provided the following information in its response:⁵³

[131] - “The Municipal Public Service Law (Decree 1-87 of the Congress of the Republic) establishes the principles and objectives governing relations between municipalities and their personnel. As a result, only financial and administrative measures designed to render the Municipal Human Resources Advisory Office operational will have a positive impact on development of the municipal civil service. Such measures

⁴⁹ Underlining added.
⁵⁰ Response of Guatemala to the questionnaire for the Fifth Round, p. 40.
⁵³ Response of Guatemala to the questionnaire for the Fifth Round, p. 44.
are currently being monitored and data are still pending as to what measures have in fact been adopted to strengthen personnel hiring systems.”

[132] - “Specific data on those new developments are still pending.”

[133] In that regard, the Committee notes the need for the State under review to pay additional attention to implementation of measure a) of the above recommendation, particularly since it is impossible to tell from the information provided by the State under review whether the Human Resources Advisory Office is up and running or whether it has been endowed with the human and budgetary resources needed for it to fully perform its functions. The Committee further notes that there were no municipal representatives present during the on-site visit who might have been able to specify, clarify, or supplement the information provided by the State under review in its reply to the questionnaire.

[134] In this regard, the Committee wishes to point out that measure (a) of the foregoing recommendation dates back to the analysis in the Second Round, in which the Committee made the following observation:

[135] “First, the Committee notes that although the Municipal Service Law, at Article 8, creates the Municipal Human Resources Advisory Office for the purposes of its application, and in other articles assigns it important functions to that end, according to comments made by the country under review in its response to the Questionnaire, this Office is not yet operational:

[136] “The municipalities of the Republic, which number 332 in total, are not part of the Civil Service System. They are governed by a general law -the Municipal Service Law- which was enacted in 1987. The aforesaid law provides for the creation of a Municipal Human Resources Advisory Office, which would have the same functions as ONSEC, except at the municipal level. This Office has not yet begun to operate and, therefore, despite the existence of the aforementioned law, municipal employees are essentially unprotected when it comes to their rights, do not necessarily perform their obligations, and act in accordance with internal regulations adopted by a number of municipalities. It should be added that despite being part of the public sector, the Constitution grants municipalities autonomy and, therefore, the executive branch is required to allocate to them a financial contribution equivalent to 10% of the regular State budget, although they have no say in that regard.”

[137] “With respect to the foregoing, the Committee considers that given the fundamental importance of the functioning of the Municipal Human Resources Advisory Office for the application of the Municipal Service Law, which creates the Office, the country under review should consider adopting, through the appropriate authority, the measures necessary to bring it into operation and to supply it with the resources required for that purpose.”

[138] Based on the foregoing, the Committee takes note of the need for the State under review to pay additional attention to implementing measure a) of the above recommendation. (See recommendation 1.1.3.11 in Section 1.1.3 of Chapter II of this report.)

[139] It should also be pointed out that the civil society organization “Acción Ciudadana” stated in the parallel document presented in connection with Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC, in reference to measure a) (and measures b), c), and d) below) inter alia, that:

http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_gtm.respuesta_soc_civil.pdf
“No progress has been made with the measures, given that Law 4130 on the municipal service has not been passed. There are, moreover, no other bills in place for reforming the municipal service.”

Measure b) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:
Set a deadline for publication of calls for candidates referred to in Article 27 of the Municipal Service Law, so that this is done sufficiently in advance of the start of selection processes, as well as precisely identifying the mechanisms to be used for their disclosure.

In its response, the State under review presents no information further to that analyzed by the Committee in the report from the Second Round. In this regard, the Committee would like to point out that this recommendation dates back to the analysis conducted in the Second Round, in which it formulated the following observation:

Second, the Committee notes that although Article 27 of the Municipal Service Law provides that each municipality shall be responsible for the organization, announcement, management, and implementation of admission and promotion tests in accordance with this law and its regulations, there is no deadline set between the publication of the call for candidates and start of the selection process, nor are the mechanisms to be used for its disclosure precisely identified. The Committee believes that the introduction of such a deadline as well as a precise identification of the aforementioned disclosure mechanisms, would help to ensure the effectiveness of the call for candidates in the selection process and therefore, it will formulate a recommendation to the country under review to that effect.

Based on the foregoing, the Committee reiterates need for the State under review to pay additional attention to implementing measure b) of the above recommendation. (See recommendation 1.1.3.12 in Section 1.1.3 of Chapter II of this report.)

Measure c) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:
Adopt provisions that make it a requirement, in the case of municipal service career positions, to bear in mind the order of scores attained by candidates in the competition when selecting who should occupy the position to be filled.

The State under review did not refer to measure (c) of the above recommendation either in its response or during the on-site visit. Therefore, the Committee notes the need for the State to give additional attention to its implementation. (See recommendation 1.1.3.13 in Section 1.1.3 of Chapter II of this report.)

Measure (d) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:
Set a maximum time-limit for the provisional and emergency appointments referred to in Article 37 of the Municipal Service Law.

The State under review did not refer to measure (d) of the above recommendation either in its response or during the on-site visit. Therefore, the Committee notes the need for the State to give additional attention to its implementation. (See recommendation 1.1.3.14 in Section 1.1.3 of Chapter II of this report.)

1.1.2. New developments in respect of the Convention provision on government hiring systems

55 Response of Guatemala to the questionnaire for the Fifth Round, p. 45.
1.1.2.1. Developments in the regulatory framework

a. Scope

• Statutory provisions of a diverse juridical nature applicable to the executive branch:

[146] - Governmental Decision No. 185-2008, “Provisions regulating application of the human resources policy to be implemented in public administration,”\(^{57}\) Article 1 of which provides that observance of said Decision shall be “mandatory for all ministries, secretariats, dependencies, and institutions in the executive branch and for decentralized or autonomous entities governed by the Civil Service Law.”

[147] Article 2 establishes principles and concepts, including equality, fair remuneration, loyalty, efficiency, seniority, the administrative career, and the duty to uphold and abide by laws *(tutelaridad de las leyes)*.

[148] Article 3 establishes and describes administrative policies, including those for strengthening the delegation of human resource management in the executive branch to the ministries and institutions; updating the Plan for Classifying Positions in the Executive Branch; recruiting suitable personnel for the proper performance of public functions, taking multicultural and gender perspectives into account; annual performance evaluations of public servants; continuous training of public servants; providing a healthy and safe workplace environment; familiarity with, and analysis of public servants’ perceptions of their workplace environment; collaboration with executive branch ministries to ensure that they constantly review organizational structures and re-design work-related processes; strategic planning of human resource allocation; and vesting ONSEC with the authority to verify compliance with human resource-related provisions.

[149] Article 5 provides that decentralized and autonomous entities that do not have post management provisions of their own must conduct the corresponding technical studies with a view to adopting a Posts and Salaries Classification Plan tailored to the organization of each of their administrative units, taking as a benchmark the criteria used in the Post Classification Plan of the executive branch.

[150] Article 9 provides that implementation of administrative policies defined therein entails updating and/or modifying the Rules of Procedure of the Civil Service law. It therefore instructs ONSEC to conduct studies and submit the bills needed to that end.

[151] - Governmental Decision No. 303-2017, which approves the Annual Wages and Salaries Plan and the Rules governing its Administration, Article 19 of which provides that: “The procedures for personnel recruitment and selection and the allocation of positions in institutions pertaining to the executive branch and decentralized entities governed by the Civil Service Law shall abide by the provisions established by the National Civil Service Office in its Employment Management Manual...”

[152] - The Instructions governing the Process for Comparing Certificates of Academic Achievement and Specialties and Legal Requirements of the ONSEC Department responsible for Selecting and Evaluating Human Resources, the purpose of which is to: “list the documents to be included in an application to participate in the process for qualifying candidates for public office, as well as the requirements and general guidelines for conducting comparisons of qualifications.”\(^{58}\)

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\(^{57}\) Published in the Central American Gazette on July 8, 2008.

\(^{58}\) Referred to in the response to the questionnaire as the “Employment Management Manual.” Available at: https://drive.google.com/file/d/14KUnqbjH6ha-GDheKrN4JpdgHZwvGJx/view
Governmental Decision No. 297-2015, authorizing the Computerized Human Resource Management System (SiARH), which is defined in Article 1 as “the set of modules and interfaced apps that together comprise the human resource management toolbox.”

- Statutory provisions of a diverse juridical nature applicable to the legislative branch:

Decree No. 36-2016 of the Congress of the Republic, issuing the new Civil Service Law of the Legislative Branch, Article 4 of which provides that: “A permanent staff member shall be construed to mean any individual who, by virtue of having been appointed in a competitive process, enters a working relationship for an indefinite period of time, in which he or she is required to render services in exchange for a salary, in an ongoing relationship of dependence and under the direct command of the Legislature, through his or her immediate supervisors and the Governing Board (Junta Directiva), pursuant to the provisions of the present Law, its enabling regulations, and corresponding manuals.”

Article 5 establishes that: “The following shall be legislative support personnel for congressional deputies: the advisor, assistant, and secretary regulated under Article 154 bis of the Organic Law of the Legislative Branch, along with the advisors to legislative blocks and to members of the Governing Board regulated under Article 38 (b) and (c) of the Organic Law of the Legislative Branch,...” and it adds that “the contractual relationship of said personnel in the legislative branch shall last as long as the deputy elected to Congress remains on the Governing Board as Head of a Bloc, or until he or she so decides. That relationship is for a fixed period of time and shall not constitute part of the civil service career.”

Article 6 establishes that: “It is the personnel hired on a temporary basis for administrative support tasks and assigned to specific temporary posts for particular services in the different administrative areas of the legislative branch, who are subject to normal working hours and required to perform specific functions. Personnel appointed to these positions shall not be required to undergo a competitive exam process. They are hired for a fixed period of time and their contract shall not constitute part of the civil service career. The hiring period for these types of contract may not exceed the fiscal year in which the hiring took place.”

Article 7 establishes that “Persons hired to perform temporary technical or professional services shall not be considered to be public servants, nor shall they have the status of employees of the legislative branch. They are hired to perform temporary or professional services on the following conditions: a) They are not subject to regular working hours, to an ongoing relationship of dependence, or to anybody’s direct command; b) Remuneration shall consist of technical or professional fees (honoraria) billed; c) A report on the work done must be presented; d) They shall not receive any social security or other benefits, as their services shall be provided under a civil, non-labor law contract for a set period; and e) The hiring period for these types of contract may not exceed the fiscal year in which the hiring took place.”

Article 8 establishes the following ban: “Relatives within legally prescribed degrees of consanguinity or affinity with deputies or workers in the legislative branch shall not be eligible for hiring under any legislative budget heading and may not, therefore, be hired.”

Article 31 states that: “The Civil Service System of the Legislative Branch is hereby created, establishing rights and obligations with respect to the entry, retention, upgrading, promotion, training, discipline and other activities of workers, of whatever grade or category, with a view to safeguarding their dignity, independence, and professional excellence in the performance of their functions as part of the regular legislative process.”

Article 32 provides that: “The administrative career of the Civil Service System of the Legislative Branch is hereby created for staff members on the roster of human resources of the Legislature at the
service of Congress. The enabling regulations for the present law shall regulate the administrative career service.”

[161] Article 35 provides that: “Entry into the Civil Service System of the Legislative Branch in order to fill a vacancy shall be subject to a competitive process, pursuant to the present Law, its enabling regulations, and the corresponding manuals.”

[162] Article 38 provides that: “The procedures and requirements for competitive processes shall be established in the vacancy announcements issued by the Directorate of Human Resources, following approval by the Governing Board. Those announcement shall be published and disseminated in all visible sites within the legislative buildings, in the legislative branch’s official media, in a widely circulated daily newspaper, and in other media. The announcements must be posted for no less than five days.”

[163] Article 39 provides that: “The following deadlines shall apply for the competitive process: a) The announcement of the competitive process shall be made within one month of the vacancy occurring; b) The competitive process shall be conducted within a period not to exceed three months; c) The appointment shall be made within one month following completion of the competitive process, pursuant to the provisions of this Law.”

[164] Article 41 establishes the content to be provided in vacancy announcements.

[165] Article 42 provides that: “The personnel selection process identifies the candidates who meet the profile for the position. The Directorate of Human Resources shall draw up the procedures and tools needed for that purpose pursuant to the relevant rules of procedure and manuals.”

[166] Article 43 provides that: “The personnel selection process identifies the candidates who meet the profile for the position. The Directorate of Human Resources shall draw up the procedures and tools needed for that purpose pursuant to the relevant rules of procedure and manuals.”

[167] Decision No. 9-2017, “Enabling Regulations to the Law and Civil Service System of the Legislative Branch,” the purpose of which, according to Article 1 thereof, is “to develop and establish the various legal institutions established in the Civil Service Law of the Legislative Branch –hereinafter the Law” – with a view to achieving the appropriate implementation and interpretation needed to forge a properly functioning legislative civil service with a stable workforce.

[168] Article 8 defines the bodies constituting the civil service as follows: “The Governing Board, in its capacity as the Nominating Authority for the Civil Service System of the Legislative Branch, shall use the Directorate of Human Resources as the body competent to execute its decisions in coordination with the Office of the Director General.”

[169] Article 9 provides that all those in management categories – directors, deputy directors, department chiefs, deputy heads of department and others of a similar nature – shall be deemed to hold trust positions, pursuant to the current positions manual, along with those regulated in Article 5 of the Law. The latter may be removed at will, are not entitled to overtime, may not enroll in a trade union, and given the nature of their positions are not subject to working hours restrictions, such as attendance controls.”

[170] Article 19 provides that “The administrative career contemplated in Article 32 of the Law shall comprise: a) Legislative Career: This shall include permanent staff who, due to the nature of the legislative branch, are performing their technical/parliamentary functions in the Governing Board, in legislative blocs, Working Commissions, Legislative Directorates and Legislative Studies and Research Directorates directly related to the constitutional functions assigned to this branch; and b) Administrative Career: This
shall include permanent staff directly performing administrative, financial, and operational support functions that contribute to the smooth performance of the various bodies making up the legislative branch, namely the Office of the Director General and those reporting to it and the Internal Audit Directorate..."

[171] Article 20 provides that: “The public competition-based civil service comprises all those (permanent staff) positions, appointment to which requires meeting the qualifications and requirements established by law, and which are subject to legal provisions. Excepted from this provision are the employees referred to in Articles 5 and 6 of the Law. The ‘public’ nature of the competitive process is a reference to the requirement to disseminate each vacancy announcement in all the media established in Article 38 of the Law.

[172] Article 21, on the call to compete for a vacancy, provides that: “The Human Resources Directorate shall, within one month of a vacancy occurring, convene all those interested to take part in an internal or external competition for positions in the legislative branch; to which end, it shall verify compliance with the requirements established in Articles 39 and 41 of the Law, and the following: a) Place within the organizational structure, and b) Principal function.”

[173] Article 22 provides that “The types of convocation for entry into this service may be: a) Internal: This type includes employees of the legislative branch who participate or who are seeking promotion; b) External: This includes persons not working for the legislative branch.”

[174] Article 23 provides that: “Compliance with Article 43 of the Law requires complying with the procedures established in the respective Manual. The Human Resources Directorate shall select the set of tests to be used to evaluate a candidate’s skills.”

[175] Article 24 provides that: “The Human Resources Directorate shall conduct appropriate tests as part of the competitive processes. It shall also devise an objective system for quantifying the outcomes of interviews, the assessment of references, and the results of exams and tests.”

[176] Article 25 provides that: “In order to be declared eligible, a candidate must obtain the minimum scores established in the evaluation system and meet the requirements established by law, these regulations, and the manuals.”

[177] Article 26 provides that: “Within one month of completing the selection process, the Governing Board of the Congress of the Republic shall proceed to issue its appointment decisions regarding those who will work for the civil service of the legislative branch. As for the management positions referred to in Article 45 of the Law, the Governing Board’s decision must be approved by two-thirds of its members. The appointment procedure shall be set forth in the corresponding manual.”

- Statutory provisions of a diverse juridical nature applicable to the Office of the Attorney General (Ministerio Público):

[178] – Decree 18-2016, amending the Organic Law of the Office of the Attorney General,⁵⁹ Article 75 of which establishes that “Professional career shall be construed to mean the system for selecting, appointing, promoting, transferring, evaluating, and disciplining Office of the Attorney General personnel, including public prosecutors and technical and administrative personnel in such a way as to ensure professional excellence in the performance of their functions and equal opportunities for both entering and rising to higher positions within the institution.

⁵⁹ Available at: http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_gtm_anexo113.pdf
“Everything relating to the professional career service within the Office of the Attorney General shall be governed by the present Law, in concordance with international human rights instruments, the Political Constitution of the Republic of Guatemala, and any rules of procedure issued by the Attorney General (Fiscal General).

The public prosecutor career service comprises regional public prosecutors, district public prosecutors, deputy district public prosecutors, sectional public prosecutors and their deputies, and Office of the Attorney General’s agents and auxiliaries. The technical career service comprises professional and technical/scientific personnel engaged in tasks lending support to criminal prosecution. The administrative career includes personnel providing administrative support services.”

Article 76 establishes that the professional career system of the Office of the Attorney General, which covers the public prosecution, technical, and administrative career services, shall be governed by the principles of appropriateness (idoneidad), objectivity, integrity and honesty, transparency, nondiscrimination, and stability.

Article 77 establishes grounds for disqualification from entry into the Office of the Attorney General career service and for incompatibility with the function of member of the Office of the Attorney General.

Article 78 provides that “appointments to fill positions in the Office of the Attorney General shall be subject to the procedure set forth in the Rules of Procedure, which must be governed by competitive merit-based tests issued by the Attorney General.”

Article 79 on entry into and promotion within the Office of the Attorney General’s career service establishes that: Every time the needs of the service are assessed at the behest of the Attorney General, the institution’s Training Unit shall convene a competitive process.

The call for candidates to fill vacancies shall be published at least once in the Official Gazette, in another national circulation daily newspaper, and by other media at the institution’s disposal, at least one (1) month prior to the date on which the competitive processes are scheduled to begin. The vacancy announcement shall include: the post to be filled competitively; legal and other formal requirements; the salary and benefits offered; where applicable, the number of vacancies, with an exact indication of the place or region in which the job is to be performed; the times and place for both collecting the terms and conditions for applications and for publishing results.

The same Article also establishes that the stages for entry into and promotion within the public prosecutor career service include pre-qualification and the competitive exam, which in turn includes the following stages: review of merits and written and oral tests of candidates’ knowledge.

Decision No. 08-2019, issuing the “Rules of Procedure of the Office of the Attorney General’s Professional Career Service in the Office of the Attorney General, Article 1 of which provides that their purpose is “to develop the precepts contained in the Organic Law of the Office of the Attorney General regarding the public prosecutor’s professional career service with regard to selection, appointment, and promotion of public prosecution personnel, by establishing how competitive processes are to be organized at various stages, offering equal opportunities to all.”

Article 3 provides that: “Pursuant to Articles 9 and 75.3 of the Organic Law of the Office of the Attorney General, the public prosecutor professional career service includes the following positions: a) Regional public prosecutors; b) District public prosecutors; c) Deputy district public prosecutors; d)
Sectional public prosecutors; e) Deputy sectional public prosecutors; f) Office of the Attorney General’s agents; and g) Office of the Attorney General’s auxiliaries.

[189] “A public prosecutor’s professional career begins when he or she is appointed to one of the aforementioned positions and ends when that person’s working relationship with the Office of the Attorney General terminates for whatever reason.”

[190] Article 8 establishes the minimum content to be provided in the vacancy announcement.

[191] Article 9 establishes that the terms and conditions of the competitive process shall be drawn up by the Training Unit in coordination with the Directorate of Human Resources, establishes their minimum content, and further establishes that those terms and conditions must be complied with by anyone wishing to compete.

[192] Article 10 refers to the publication and dissemination of the vacancy announcement, and provides for two different types: internal (directed exclusively at personnel already working in the Office of the Attorney General) and, if the vacancy or vacancies are not filled, external: open to anyone outside the Office of the Attorney General. It also establishes that the vacancy announcement shall be published at least once in the Official Gazette, in another national circulation daily newspaper, and in other media at the disposal of the Office of the Attorney General, at least one month prior to scheduled start of the competition or competitive process, with a clear indication of the type (internal or external) of announcement. The same Article states that the official start of the competition or competitive process shall be construed to mean the date on which interested parties must submit their application to take part in it.

[193] Articles 27 and 29 regulate the appointment proposal and the appointment procedure, respectively.

b. Observations

[194] The Committee would first like to acknowledge the new regulatory measures adopted by the State under review to continue to push forward with the creation, maintenance, and strengthening of its government hiring systems, pursuant to Article III (5) of the Convention.

[195] Having said that, the Committee believes it useful to make a number of comments regarding the advisability of strengthening, developing, and/or adapting certain provisions that have to do with those new developments, notwithstanding the observations made by the Committee in Section 1.1.1. above in connection with the follow-up on implementation of the recommendations made to the State under review in the report from the Second Round.

• As regards the new regulatory developments applicable to the executive branch:

[196] With respect to Governmental Decision No. 185-2008, “Provisions regulating application of the human resources policy to be implemented in public administration,” the Committee notes that Article 3(c) provides that one administrative policy shall be geared to recruiting personnel for the proper performance of public offices, whereby consideration shall be given to the need for multiculturality and a gender perspective. The Committee notes, however, that this policy makes no mention of merit. In that regard, the Committee believes that it would be appropriate for the State under review to consider the possibility of amending its regulations to include that factor in its administrative policies for recruiting human resources. The Committee will make a recommendation. (See recommendation 1.1.3.15 in Section 1.1.3 of Chapter II of this report.)

• As regards the new regulatory developments applicable to the legislative branch:
As regards Decree No. 36-2016, “Civil Service Law of the Legislative Branch” (LSCOL) and its enabling regulation, Decree No. 9-2017, the Committee has the following comments to make:

First, the Committee notes that the Single Chapter on Fundamental Precepts in Title I, “General Provisions,” of the LSCOL defines permanent staff, legislative support personnel, temporary administrative support personnel, and persons hired to perform technical or professional services of a temporary nature, while the enabling regulations establishes what position shall be trust positions. However, it does not provide a definition of public official/public servant/government official (funcionario público) and, although that definition is provided in the Civil Service Law (LSC), legislative branch personnel do not fall within the remit of the LSC and are governed by their own regulations.

It is worth recalling in this connection that the Convention contains the following definitions:

“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.”

In light of the foregoing, the Committee believes that it would be appropriate for the State under review to consider incorporating in the rules and regulations that govern the civil service a definition of what constitutes a public official that is consistent with the definitions of public servant and public service enshrined in the Convention. The Committee will make a recommendation. (See recommendation 1.1.3.16 in Section 1.1.3 of Chapter II of this report.)

Second, the Committee notes that Article 42 of the LSCOL provides that recruitment of personnel is the process for identifying candidates that match the profile for the position and that to that end the Human Resources Directorate shall devise appropriate procedures and instruments pursuant to the rules of procedure and manuals on the subject.

The Committee likewise notes that Article 43 of the Law provides that personnel selection is the process for establishing the capacity, knowledge, skills, experience, and other qualities of candidates for the position or vacancy and that, to that end, the Human Resources Directorate shall devise appropriate procedures and instruments pursuant to the rules of procedure and manuals on the subject, and that Article 23 of the Rules of Procedure for tests or exams provides that, in order to comply with Article 43, the procedures set forth in the respective manual need to be followed. Along those same lines, the Committee notes that Article 27 of the Rules of Procedure provides that the recruitment procedure must be set forth in the corresponding manual.

Here, the Committee observes that, although the legislative branch has issued a series of manuals, such as manuals on positions and salaries for various categories of personnel, organizational manuals establishing the organizational structure of various directorates, including the Human Resources Directorate, and a performance evaluation manual, all of which are posted on the Congressional website, manuals on the above-mentioned procedures have not been issued. Here, the Committee believes it would be appropriate for the State under review to consider the possibility of issuing a Manual of General

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60 See: https://www.congreso.gob.gt/transparencia-y-acceso-a-la-informacion/informacion-publica-de-oficio/manuales-y-procedimientos/
Procedures for recruiting and selecting legislative branch personnel, at every stage, so that all those procedures are consolidated into a single set of norms, and guided by the principles of openness, equity and efficiency contemplated in the Convention. The Committee will formulate a recommendation to that end. (See Recommendation 1.1.3.17 of Section 1.1.3 of Chapter II of this report.)

• As regards the new regulatory developments applicable to the Office of the Attorney General:

[206] Concerning Decree No. 18-2016, “Organic Law of the Office of the Attorney General” (LOMP) and Decision No. 08-2019, “Rules of Procedure of the Public Prosecutor’s Professional Career Service in the Office of the Attorney General,” the Committee has the following comments to make:

[207] First, the Committee notes that, while the LOMP establishes the basic principles for the professional career service in the Office of the Attorney General, it does not define what constitutes a public servant (funcionario público), nor is such a definition to be found in any regulation specifically dealing with the hiring of Office of the Attorney General personnel.

[208] It is worth recalling in this connection that the Convention contains the following definitions:

[209] “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.

[210] “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.”

[211] In light of the foregoing, the Committee believes that it would be appropriate for the State under review to consider incorporating in the rules and regulations that govern the Office of the Attorney General a definition of what constitutes a public official that is consistent with the definitions of public servant and public service enshrined in the Convention. The Committee will make a recommendation. (See recommendation 1.1.3.18 in Section 1.1.3 of Chapter II of this report.)

[212] Second, the Committee observes that Article 75 of the LOMP defines the professional career service as the system for selecting, appointing, promoting, transferring, evaluating, and disciplining employees of the Office of the Attorney General, be they prosecutors or technical or administrative personnel, that shall ensure professional excellence in the performance of their functions and equal opportunity to enter and rise in rank within the institution. It also observes that Article 78 establishes that appointments to fill vacancies in the Office of the Attorney General shall be subject to the procedure set forth in the rules of procedure, which must be based on merit and competition requirements established by the Attorney General.

[213] However, the Committee also observes that Article 3 of the Rules of Procedure governing the Professional Career Service in the Office of the Attorney General provides that the public prosecutor’s professional career service it regulates includes only the positions of a) Regional public prosecutors; b) District public prosecutors; c) Deputy district public prosecutors; d) Sectional public prosecutors; e) Deputy sectional public prosecutors; f) Office of the Attorney General agents; and g) Office of the Attorney General auxiliaries., and specifically establishes that a public prosecutor’s professional career starts when he or she is appointed to one of the aforementioned positions and ends when that person’s working relationship with the Office of the Attorney General terminates for whatever reason.
Here, the Committee notes that the Rules of Procedure governing a public prosecutor’s professional career, which, according to its introductory section, were adopted, inter alia, in accordance with above-mentioned Articles 75 and 78, do not encompass all Office of the Attorney General personnel, and cover only those refined in Article 3 of the Rules of Procedure, even though the definition of a public prosecutor’s career in Article 75 of the LOMP is broader and Article 78 provides that appointments to fill positions in the Office of the Attorney General shall be regulated and makes no distinction between positions and is even broader than Article 75.

In the same vein, the Committee also notes that, during the on-site visit, representatives of the Office of the Attorney General pointed out that: With regard to the administrative personnel career service, there are no specific rules of procedure. Nevertheless, it is governed by the principles referred to previously and other pertinent provisions of the Organic Law of the Office of the Attorney General, and, as regards requirements of the Political Constitution of the Republic of Guatemala, by the Internal Working Rules of Procedure of the Office of the Attorney General and the Collective Covenant on Working Conditions signed by the Trade Union of Office of the Attorney General workers and the Office of the Attorney General.

In light of all of the above, and bearing in mind, moreover, that a recommendation had already been made in the Second Round to regulate the administrative career service in the Office of the Attorney General, the Committee believes it would be appropriate for the State under review to consider adopting such provisions as are needed to regulate the system for appointing all Office of the Attorney General personnel, in all hiring types and categories, above all in view of the fact that said institution does not have a civil service law of its own. Likewise, it would be appropriate to consider adopting new regulatory measures to include technical and administrative personnel in the regulations governing a public prosecutor’s professional career, in accordance with the LOMP, bearing in mind, to that end, the principles of merit, openness, equity, and efficiency upheld in the Convention. The Committee will make recommendations in that regard. (See recommendations 1.1.3.19 and 1.1.3.20 in Section 1.1.3 of Chapter II of this report.)

Third, the Committee notes that neither the LOMP nor the Rules of Procedure governing a Public Prosecutor’s Professional Career in the Office of the Attorney General provide for appeals to contest decisions taken during the selection process. The Committee considers that the existence of such remedies would help to ensure the effectiveness of the aforementioned process and will make a recommendation to the State under review that it consider establishing said remedies. (See Recommendation 1.1.3.21 in Section 1.1.3 of Chapter II of this report.)

Fourth, the Committee observes that, although Article 79 of the LOMP establishes that a vacancy announcement shall be published at least once in the Official Gazette, in another national circulation daily newspaper, and in other media at the institution’s disposal, at least one (1) month prior to the scheduled start of the competitive processes, the State under review had the following to say in its response:

“Based on previous publication practices, external vacancy announcements are published between two and four weeks, or more, prior to the start of the selection process.”
https://www.mp.gob.gt/noticias/convocatoria-2018/

“Internal vacancy announcements are published between two and four weeks prior to the date of reception of the vacancy documents. Publication is done either via in-house e-mails or through mails posted through the Department of Information and Press and the Administrative System Platform of the Office of

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62 Response of Guatemala to the questionnaire for the Fifth Round, p. 42.
On this, the Committee notes that the information provided by the State under review regarding the notice given of vacancies in actual practice differs from that stipulated in the LOMP. The Committee therefore believes it would be appropriate for the State under review to consider taking steps to ensure that vacancy announcements are published as per the deadlines established in the LOMP. The Committee will make a recommendation. (See recommendation 1.1.3.22 in Section 1.1.3 of Chapter II of this report.)

Finally, the Committee notes that Article 77 of the LOMP, which defines grounds for disqualification or incompatibility, makes no mention of conflicts of interest derived from ties of consanguinity or affinity. In that regard, the deems it advisable that the State under review consider undertaking the legislative amendments needed to include said disqualification or incompatibility in the regulations governing its civil service. The Committee will make a recommendation. (See recommendation 1.1.3.23 in Section 1.1.3 of Chapter II of this report.)

1.1.2.2. New developments with regard to technology

- As regards the new regulatory developments applicable to the executive branch:

  [223] – Implementation of GUATEMPELO, an employment opportunities portal in the executive branch, as part of the Computerized Human Resource Management System (SiARH).

  [224] – Implementation of the Computerized Human Resource Management System (SiARH), the legal basis for which is Governmental Decision No. 297-2015, which authorizes it. Article 1 thereof defines the System as “the set of modules and interfaced apps that together comprise the human resource management toolbox.”

  Article 2 provides that the objective of the SIARH is to systematize human resource processes in institutions governed by the Civil Service, modernize management, and make it more transparent, while making optimal use of public resources.

  Article 3 establishes that the SIARH modules shall conform to the Personnel Management System instituted in the Civil Service Law. Those modules include, inter alia, the human resource planning module, the module used to organize work processes, and the employment management module, whereby the last-mentioned module includes apps for managing personnel recruitment and selection processes, as well as appointments and hiring, promotions, transfers, swaps and other personnel actions to do with human resource allocation. They also include the module for managing remunerations, labor relations, skills development performance, and well-being in the workplace.

  Article 4 provides that the SIARH shall be governed by the National Civil Service Office (ONSEC), which, pursuant to Article 5, is also in charge of the conceptual design of the System.

  Article 6 establishes that ONSEC and the Technology Directorate of the Ministry of Public Finance are responsible for developing and implementing the System in an orderly and gradual process.

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63 Available at: [https://guatempleo.siarh.gob.gt/](https://guatempleo.siarh.gob.gt/)
65 Published in the Central American Gazette on Wednesday, December 30, 2015.
Article 7 stipulates that the SIARH shall be connected to the Personnel Payroll and Registration System (GUATENOMINAS) of the Integrated Financial Administration System (SIAF) in processes that have to do with the remuneration of personnel and others deemed necessary for consolidating information on public servants, pursuant to the regulations governing that System.

Article 8 provides that use of the SIARH shall be mandatory for human resource management in all institutions governed by the Civil Service Law, but may also be used by other entities that decide to adopt it following authorization by ONSEC. It further establishes that the obligation to use the SIARH is subject to the development and gradual implementation of the apps and modules it contains, based on any regulations and guidelines that ONSEC may issue.

- As regards the new technological developments applicable to the Office of the Attorney General:

  – Administrative System Platform of the Office of the Attorney General (SIAMP), with its employment exchange, in which applicants create an account, post their background information, and present their candidacy to take part in the competitive processes that interest them.\footnote{https://www.mp.gob.gt/}

The Committee takes note of the technological developments relating to the systems for hiring public servants in the Office of the Attorney General cited by the State under review in its response and during the on-site visit.

  a. Observations

- As regards the new technological developments applicable to the executive branch:

The Committee acknowledges that the technological developments that have taken place in this area represent advances in terms of human resource management, particularly those related to systems for hiring executive branch personnel. Nevertheless, the Committee deems it appropriate to make a number of observations in that regard:

The Committee notes, for instance, that, pursuant to Governmental Decision No. 297-2015, ONSEC and the Technology Department of the Ministry of Public Finance are responsible for the orderly and gradual development and implementation of the Computerized Human Resource Management System (SiARH). In that regard, the Committee likewise notes that, during the on-site visit, representatives of the executive branch pointed out that they needed support to be able to fully implement all stages of the program. Accordingly, the Committee believes that it would be appropriate for the State under review to consider strengthening ONSEC and the Technology Directorate of the Ministry of Public Finance, to the extent that available resources permit, by providing them with the human and budgetary resources needed to develop and fully implement all stages of the program and ensure the sustainability of the system. The Committee likewise invites the States Party, as well as other cooperation organizations, to help these institutions achieve these goals. The Committee will make recommendations. (See recommendations 1.1.3.24 and 1.1.3.25 in Section 1.1.3 of Chapter II of this report.)

1.1.2.3. Results

  - Results presented by the Executive Branch:

During the on-site visit, the National Civil Service Office (ONSEC) presented results in relation to recruitment processes in state organs and entities under its jurisdiction, notably the following:

\footnote{https://www.mp.gob.gt/}
**Statistical Table 1:**

**TOTAL EMPLOYEES IN THE EXECUTIVE BRANCH AND OTHER DEPENDENCIES**

**2015-2019 PERIOD**

updated to March 2019

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<td>954</td>
<td>866</td>
<td>820</td>
</tr>
<tr>
<td>029 Other temporary personnel remunerations</td>
<td>9,755</td>
<td>8,070</td>
<td>11,474</td>
<td>12,507</td>
<td>14,120</td>
</tr>
<tr>
<td>031 Day laborers (Jornales)</td>
<td>12,210</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


1/ Includes teachers and police personnel.

* Data as of March 2019

031 shows data for 2019 only

There are no data in this office for Sub-group 18.

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**Statistical Table 2:**

**Processes in the Computerized Human Resource Management System -SIARH-**

<table>
<thead>
<tr>
<th>Process Type</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>2019*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ongoing vacancy announcements [CV activos]</td>
<td></td>
<td>86,500</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Processes conducted in the SIARH</td>
<td></td>
<td>6,608</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Internal vacancy announcements</td>
<td></td>
<td>5,822</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>External vacancy announcements</td>
<td></td>
<td>2,923</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Processes completed without filling the vacancy</td>
<td></td>
<td>3,040</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Processes completed with eligible candidates</td>
<td></td>
<td>2,290</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Persons declared eligible</td>
<td></td>
<td>3,117</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

[236] With respect to the above statistics, the Committee observes, first, that while Statistical Table 1 is broken down by year, Statistical Table 2 is not, and that this information does not reveal what procedures were used to select which personnel in this period; how many entered the service thanks to merit-based competitive processes and how many did so via other procedures; and how many were appointed directly. Nor does the information reveal whether non-permanent personnel, including personnel hired under services contracts (029), had their contracts successively renewed, and for how long. The Committee further notes that the State under review did not present statistics on the number of appeals filed against resolutions handed down in selection processes and their outcomes. The Committee believes that it would be pertinent for the State under review to consider keeping such statistics, in order to identify challenges and adopt corrective measures, as necessary. The Committee will make a recommendation. (See recommendation 1.1.3.26 in Section 1.1.3 of Chapter II of this report.)
Second, the Committee notes that during the on-site visit, representatives of ONSEC pointed out that personnel not included under heading 011 (permanent staff), including personnel hired under heading 029 who are governed by the Public Hiring Law and not the Civil Service Law, had been filing lawsuits and that the courts had ruled in their favor, in the sense of recognizing them as public servants because, even though they had been hired as temporary personnel and even under services contracts, in actual fact they were performing public service functions. Accordingly, the ONSEC representatives reported that the status of all personnel hired under different headings to perform public functions was in the process of being regularized.

In this regard, the Committee believes that it would be appropriate for the State under review to consider avoiding improper use of non-permanent personnel categories and services contracts to appoint all the personnel performing public functions in the executive branch and to ensure that all appointments are carried out using merit-based procedures and bearing in mind the principles of openness, equity, and efficiency upheld in the Convention. The Committee will make a recommendation. (See recommendation 1.1.3.27 in Section 1.1.3 of Chapter II of this report.)

In that regard, it should be noted that, during the on-site visit, the civil society organization “CEIDEPAZ” pointed out that several years ago an attempt was made to reduce the government payroll by, inter alia, offering voluntary retirement packages, but that immediately thereafter personnel were hired under heading 029, which is that used to hire personnel on services contracts, who in practice replaced the permanent staff. They added that when personnel on such contracts are dismissed, the State loses the lawsuits because the courts recognizes their status as public servants.

Third, the Committee observes that Article 4 of the Civil Service law provides the following definition of public servant: “For the purposes of this Law, a public servant shall be construed to mean an individual holding a position in the Public Administration by virtue of an appointment, contract, or any other legally established tie, under which that individual is personally required to render services or perform a work in exchange for a wage or salary, in an ongoing relationship of dependence on, and at the direct command of, that Public Administration.”

It is worth recalling in this connection that the Convention contains the following definitions:

“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.”

In light of the foregoing, the Committee believes that it would be appropriate for the State under review to consider incorporating in the rules and regulations that govern the civil service a definition of what constitutes a public official that is consistent with the definitions of public servant and public service enshrined in the Convention. The Committee will make a recommendation. (See recommendation 1.1.3.28 in Section 1.1.3 of Chapter II of this report.)

Finally, the Committee notes that during the on-site visit the representatives of the Human Resources Directorate of the Ministry of Finance, in their capacity as administrators of the SIARH system, pointed out that between 2014 and 2017 “No vacancy announcements were made due to the fact that the Collective Covenant on Working Conditions in force at the time was inconsistent with the regulations...
adopted by ONSEC (promotions and first-time entries into the service).” On this matter, the Committee believes it would be appropriate for the State under review to consider taking pertinent steps to ensure that competitive processes do take place, so as to guarantee the effectiveness of the merit-based system for entering the civil service, in keeping with the principles of openness, equity, and efficiency upheld in the Convention. The Committee will make a recommendation. (See recommendation 1.1.3.29 in Section 1.1.3 of Chapter II of this report.)

- Results presented by the Legislative Branch:

[246] During the on-site visit, the State under review presented results in relation to the recruitment processes of the legislative branch, notably the following:

<table>
<thead>
<tr>
<th>Statistical Table 1:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of CURRENT vacancies announced to be filled competitively (to fill positions at the director, deputy director, section chief, and professional levels).</td>
<td>51</td>
</tr>
<tr>
<td>Recall processes (procesos de revocatoria) declared inadmissible in 2018.</td>
<td>2</td>
</tr>
<tr>
<td>TOTAL</td>
<td>53</td>
</tr>
</tbody>
</table>

[247] With respect to the above statistical table, the Committee points out that the information is not broken down by year and it is not possible to discern whether it refers only to competitive vacancy announcements for 2018, or includes processes for other years. In addition, the above statistical information does not show the current status of the competitive processes referred to: whether they are ongoing or have already been completed. In the same vein, the Committee notes that this Table does not contain information on personnel hired under other headings, such as temporary support personnel for the legislature, temporary administrative support personnel and personnel hired to provide technical or professional services, or on whether the contracts for such personnel were successively renewed and, if so, for how long. In addition, although the information identifies two recall processes in 2018 that were declared inadmissible, it is not possible to ascertain whether there were other proceedings related to claims regarding hiring processes or the nature and outcomes of said proceedings, above all given that under Article 98 of the Secret Service Law recall appeals are specifically contemplated in Chapter II of that law, which deals with sanctions:

[248] Based on the foregoing, the Committee believes that it would be pertinent for the State under review to consider keeping detailed, annual statistics on the results of selection processes in the legislative branch, so as to know which personnel entered into congressional service by means of public merit-based competitions, other processes, or by direct appointment; how many entered under different headings; whether there were successive renewals in cases of temporary appointments under other headings, including service contracts, and for what length of time; as well as how many selection procedures were challenged, and what the results of those challenges were, in order to identify challenges and recommend corrective measures, as necessary. The Committee will make a recommendation. (See recommendation 1.1.3.30 in Section 1.1.3 of Chapter II of this report.)

- Results presented by the Judiciary:

[249] Bearing in mind that although, during the on-site visit, the State under review presented statistics on disciplinary proceedings, it did not submit information on results in relation to hiring in the judiciary,

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67 In a document presented on August 12, 2019, the State under review offered the following comment: “Since January 2018, there have been several vacancy announcements and more than 130 positions have been filled competitively.”

the Committee believes that it would be useful for the State under review to consider preparing detailed statistics compiled on an annual basis on the results of selection processes for judiciary personnel, with a view to identifying challenges and recommending corrective measures, as necessary. The Committee will make a recommendation in that connection. (See recommendation 1.1.3.31 in Section 1.1.3 of Chapter II of this report.)

- Results presented by the Office of the Attorney General:

[250] During the on-site visit, the State under review presented results in relation to the recruitment processes of the Office of the Attorney General, notably the following:

<table>
<thead>
<tr>
<th>Statistical Table 1:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>Results</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Action</td>
</tr>
<tr>
<td>023 appointments</td>
</tr>
<tr>
<td>022 appointments</td>
</tr>
<tr>
<td>Promotions</td>
</tr>
<tr>
<td>Transfers</td>
</tr>
<tr>
<td>Terminations (bajas)</td>
</tr>
<tr>
<td>Swaps</td>
</tr>
<tr>
<td>Total individual dismissals (suspensiones)</td>
</tr>
<tr>
<td>029 hirings</td>
</tr>
</tbody>
</table>

Note: 022 and 031 hirings include re-hirings

[251] Regarding the statistics provided by the Office of the Attorney General, the Committee notes that institution provided annual information for the past three years. From that information, it transpires that the only item for permanent staff positions and persons entering the service through a competitive process is heading 011. However, the Committee observes that in the above chart the appointments under heading 011 and those for 031 (personnel hired on a day-to-day basis who are not hired through competitive processes) are shown on the same line so that it is impossible to distinguish between them or to tell whether competitive processes were used for the permanent staff appointments. The Committee further notes that while this information indicates the number of appointments under different headings, it is impossible to tell how those appointed entered the service, whether they passed some merit-based test or whether they were direct appointments, or whether temporary personnel contracts were successively renewed and for how long. Nor is it possible to tell how many selection processes were contested and the outcomes of those appeals. In that regard, the Committee believes that it would be appropriate for the State under review to consider compiling detailed statistics on these matters every year and it will make a recommendation to that effect. (See recommendation 1.1.3.32 in Section 1.1.3 of Chapter II of this report.)

[252] Similarly, it needs to be pointed out that, during the on-site visit, the representatives of the Office of the Attorney General explained that the headings under which personnel in the institution are classified are as follows: Heading 011: permanent staff, who are the only ones required to enter via a competitive process; Heading 031 corresponds to personnel hired on a daily wage basis, appointed for a specific term, with no competitive exam requirement; Heading 023 corresponds to temporary staff, not subject to competition; Heading 022: temporary, fixed-term appointments, not subject to competition; Heading 029: personnel under contract to provide services, under to the Government Hiring Law. Here, the Committee

observes that in the past three years the number of temporary, fixed-term appointments under Heading 022 has increased 35% and that the number of hirings under the services contract arrangement (Heading 029) has also been gradually increasing.

[253] In that respect, the Committee notes that the only vacancies subject to competitive selection processes are those coming under Heading 011 (permanent staff), which leaves wide open the possibility of other headings being used to hire personnel to perform public functions for the Office of the Attorney General, without undergoing public merit-based competitive selection processes. The Committee therefore believes that it would be best for the State under review to consider adopting the measures, procedures, and provisions needed to regulate the recruitment of all Office of the Attorney General (MP) personnel under those headings currently lacking them, with a view to ensuring that as a general rule entry into the MP is based on merit and governed by the principles of openness, equity, and efficiency upheld in the Convention. The Committee will make a recommendation to that effect. (See recommendation 1.1.3.33 in Section 1.1.3 of Chapter II of this report.)

[254] The Committee likewise believes that it would be appropriate for the State under review to consider analyzing the reason why the number of persons hired under temporary fixed-term contracts and the number of those hired under services contracts have been increasing, in order to ensure that the increase is not due to evasion of merit-based competitive selection requirements. The Committee will make a recommendation to that effect. (See recommendation 1.1.3.34 in Section 1.1.3 of Chapter II of this report.)

[255] Finally, the Committee notes that during the on-site visit representatives of the Office of the Attorney General pointed out that one of the obstacles they faced with conducting all the competitive processes required was a shortage of staff. Here, the Committee believes that, available resources permitting, it would be appropriate for the State under review to consider strengthening the Office of the Attorney General, so as to endow it with the human and budgetary resources needed for it to fully perform that function. The Committee will make a recommendation to that effect. (See recommendation 1.1.3.35 in Section 1.1.3 of Chapter II of this report.)

• Results presented by the Municipalities:

[256] Bearing in mind that the State under review did not present statistics on personnel hiring processes in the municipalities, the Committee believes that it would be useful for the State under review to consider preparing detailed statistics compiled on an annual basis on the results of selection processes for said personnel, with a view to identifying challenges and recommending corrective measures, as necessary. The Committee will make a recommendation in that connection. (See recommendation 1.1.3.36 in Section 1.1.3 of Chapter II of this report.)

1.1.3. Recommendations

[257] In light of the comments made in Sections 1.1.1 and 1.1.2, the Committee suggests that the State under review consider the following recommendations:

1.1.3.1 Adopt appropriate measures to ensure the requisite harmony that the management of different public servant employment systems requires, taking into account, to that end, the principles of openness, equity and efficiency provided in the Convention. (See paragraphs 15 to 28 in Section 1.1.1 of Chapter II of this report.)

1.1.3.2 Adopt appropriate measures to make the provisions on publication of calls for candidates for vacant competitive positions contained in Article 18 of the Regulations of the Civil Service Law consistent with the provisions in that respect set forth in Article 45 of the Civil Service
Law, so as to make clear the obligation to observe the time limit set by the latter article for said publication, in addition to the requirement to do so, whatever the case, in the Official Gazette and in another broadly distributed newspaper, without prejudice to the possibility of resorting to such other communication mechanisms as may be deemed appropriate. (See paragraphs 29 to 48 in Section 1.1.1 of Chapter II of this report.)

1.1.3.3 Publish the Employment Management Manual of the National Civil Service Office (ONSEC) on that Office’s institutional portal, in such a way that anyone can easily consult it. (See paragraphs 49 to 50 in Section 1.1.1 of Chapter II of this report.)

1.1.3.4 Adopt provisions that require the appointing authority of the agencies of the Executive Branch to take into account the order of scores attained by eligible candidates in the competition held in the framework of the merit-based civil service admissions system, in order to select the one who should occupy the position to be filled. (See paragraphs 51 to 60 in Section 1.1.1 of Chapter II of this report.)

1.1.3.5 Adopt provisions, in the case of competitive positions in the Legislative Branch, that require an order of preference to be established in registers of eligible candidates, in keeping with their scores in the evaluation, and that the candidate with the best evaluation should be selected. (See paragraphs 77 to 81 in Section 1.1.1 of Chapter II of this report.)

1.1.3.6 Establish remedies for specifically appealing decisions taken during all stages of the selection process for the legislative branch, with respect to both internal and external competitions, with access to a higher body and enough time to effectively exercise that right of appeal. (See paragraphs 84 to 91 in Section 1.1.1 of Chapter II of this report.)

1.1.3.7 Identify in the text of the Civil Service Law of the Judicial Branch the positions that would come under the competitive examination system, or the inclusion of a provision therein to the effect that the competitive examination system shall be deemed to cover all posts not classed as subject to free appointment and removal in accordance with Article 13 of the aforesaid law, without making the foregoing subject to the requirement that they be specifically included in the competitive examination system in the Manual mentioned therein. (See paragraphs 92 to 96 in Section 1.1.1 of Chapter II of this report.)

1.1.3.8 Set a deadline for publication of calls for candidates to fill positions under the competitive examination system referred to at Article 17 of the Civil Service Law of the Judicial Branch, so that this is done sufficiently in advance of the start of selection processes, as well as precisely identify the mechanisms to be used for their disclosure. (See paragraphs 97 to 102 in Section 1.1.1 of Chapter II of this report.)

1.1.3.9 Introduce a provision, with respect to positions in the competitive system referred to at Article 30 of the Civil Service Law of the Judicial Branch, that makes it a requirement, in selecting the person to occupy the vacant post, to take into account the order of scores obtained by the candidates in the competition. (See paragraphs 103 to 110 in Section 1.1.1 of Chapter II of this report.)

1.1.3.10 Establish procedures for challenging that specifically allow appeals against decisions taken during the selection processes regulated in the LOMP and in the Law governing the Professional Career Service of the Staff of the Office of the Attorney General, at every stage of those processes, including internal and external competitions, with access to a higher body.
and enough time to effectively exercise that right of appeal. (See paragraphs 111 to 115 in Section 1.1.1 of Chapter II of this report.)

1.1.3.11 Adopt, through the appropriate authority, the measures necessary to bring into operation the Municipal Human Resources Advisory Office, created at Article 8 of the Municipal Service Law for the application of said Law, and to supply it with the resources required for that purpose, within the available resources. (See paragraphs 130 to 140 in Section 1.1.1 of Chapter II of this report.)

1.1.3.12 Set a deadline for publication of calls for candidates referred to in Article 27 of the Municipal Service Law, so that this is done sufficiently in advance of the start of selection processes, as well as precisely identifying the mechanisms to be used for their disclosure. (See paragraphs 141 to 143 in Section 1.1.1 of Chapter II of this report.)

1.1.3.13 Adopt provisions that make it a requirement, in the case of municipal service career positions, to bear in mind the order of scores attained by candidates in the competition when selecting who should occupy the position to be filled. (See paragraph 144 in Section 1.1.1 of Chapter II of this report.)

1.1.3.14 Set a maximum time-limit for the provisional and emergency appointments referred to in Article 37 of the Municipal Service Law. (See paragraph 145 in Section 1.1.1 of Chapter II of this report.)

1.1.3.15 Consider amending Governmental Decision No. 185-2008, “Provisions regulating application of the human resources policy to be implemented in public administration,” so as to include the merit principle in its administrative policies for recruiting human resources. (See paragraph 196 in Section 1.1.1 of Chapter II of this report.)

1.1.3.16 Consider incorporating in the rules and regulations that govern public service in the legislative branch a definition of public official that is consistent with the definitions of public servant and public service enshrined in the Convention. (See paragraphs 197 to 202 in Section 1.1.2 of Chapter II of this report.)

1.1.3.17 Consider issuing a Manual of General Procedures for Recruiting and Selecting Legislative Branch Personnel that covers all stages involved, and is based on the principles of openness, equity, and efficiency upheld in the Convention. (See paragraphs 203 to 205 in Section 1.1.2 of Chapter II of this report.)

1.1.3.18 Consider incorporating in the rules and regulations that govern public service in the Office of the Attorney General a definition of public official that is consistent with the definitions of public servant and public service enshrined in the Convention. (See paragraphs 206 to 211 in Section 1.1.2 of Chapter II of this report.)

1.1.3.19 Consider adopting the provisions needed to regulate the system for appointing all personnel in the Office of the Attorney General under all contract types and headings, taking into account, to that end, the principles of merit, openness, equity, and efficiency upheld in the Convention. (See paragraphs 212 to 216 in Section 1.1.2 of Chapter II of this report.)

1.1.3.20 Consider adopting the regulatory measures required to include technical and administrative personnel in the regulations governing a public prosecutor’s professional career, in accordance with the provisions of the Organic Law of the Office of the Attorney General
(LOMP), bearing in mind, to that end, the principles of merit, openness, equity, and efficiency upheld in the Convention. (See paragraphs 212 to 216 in Section 1.1.2 of Chapter II of this report.)

1.1.3.21 Establish remedies that specifically allow appeals against decisions taken during the selection processes regulated in the LOMP and in the Law governing the Office of the Attorney General’s Professional Career Service, at every stage of those processes, including internal and external competitions, with access to a higher body and enough time to effectively exercise that right of appeal. (See paragraph 217 in Section 1.1.1 of Chapter II of this report.)

1.1.3.22 Take all measures needed to ensure that vacancy announcements in the selection processes for the Office of the Attorney General are published by the deadlines stipulated in the Organic Law of the Office of the Attorney General. (See paragraphs 218 to 221 in Section 1.1.1 of Chapter II of this report.)

1.1.3.23 Consider taking the legislative steps needed to include in the LOMP, among the grounds for incompatibility or disqualification, conflicts of interest resulting from too close ties of consanguinity and affinity. (See paragraph 222 in Section 1.1.1 of Chapter II of this report.)

1.1.3.24 Consider strengthening ONSEC and the Technology Directorate of the Ministry of Public Finance by endowing them, available resources permitting, with the human and budgetary resources needed for them to be able to develop and fully implement all stages of the Computerized Human Resource Management System (SiARH) and ensure that it is sustainable. (See paragraph 234 in Section 1.1.1 of Chapter II of this report.)

1.1.3.25 Foster the necessary arrangements with other States and cooperation agencies to provide ONSEC and the Technology Directorate of the Ministry of Public Finance with the technical assistance needed for ongoing development of the Computerized Human Resource Management System (SiARH) in all its stages and to ensure hat it is sustainable. (See paragraph 234 in Section 1.1.1 of Chapter II of this report.)

1.1.3.26 Keep detailed statistics on the results of selection processes disaggregated by year, so as to comprehensively show the number and percentage of positions for all categories of personnel in State organs and entities under the jurisdiction of ONSEC, including those on services contracts or other types of appointment, as well as how many selection processes were conducted, the nature of those processes, if there were successive renewals in the case of temporary or services (fee-based) appointments and for what length of time; and the number of appeals filed against decisions in selection processes and their outcomes, in order to identify obstacles and recommend corrective measures, as necessary. (See paragraphs 235 to 236 in Section 1.1.2 of Chapter II of this report.)

1.1.3.27 Avoid improper use of non-permanent personnel categories and services contracts to appoint personnel performing public functions in the Office of the Attorney General and ensure that all appointments are carried out using merit-based procedures and bearing in mind the principles of openness, equity, and efficiency upheld in the Convention. (See paragraphs 237 to 239 in Section 1.1.2 of Chapter II of this report.)

1.1.3.28 Consider incorporating in the rules and regulations that govern public service in the executive branch a definition of public official that is consistent with the definitions of public servant and public service enshrined in the Convention. (See paragraphs 240 to 244 in Section 1.1.2 of Chapter II of this report.)
1.1.3.29 Take appropriate measures to ensure that competitive section processes are carried out in the executive branch, in order to guarantee the effectiveness of the merit-based system for entering public service in accordance with the principles of openness, equity, and efficiency upheld in the Convention. The Committee will offer a recommendation. (See paragraph 245 in Section 1.1.2 of Chapter II of this report.)

1.1.3.30 Keep detailed, annual statistics on the results of selection processes in the legislative branch, so as to know which personnel entered into congressional service by means of public merit-based competitions, other processes, or by direct appointment; how many entered under different headings; whether there were successive renewals in cases of temporary appointments under other headings, including service contracts, and for what length of time; as well as how many selection procedures were challenged, and what the outcomes of those challenges were, in order to identify challenges and recommend corrective measures, as necessary. (See paragraphs 246 to 248 in Section 1.1.2 of Chapter II of this report.)

1.1.3.31 Keep detailed, annual statistics on the results of selection processes in the Judiciary, so as to know which personnel entered into the service by means of public merit-based competitions, other processes, or by direct appointment; how many entered under different headings; whether there were successive renewals in cases of temporary appointments under other headings, including service contracts, and for what length of time; as well as how many selection procedures were challenged, and what the outcomes of those challenges were, in order to identify challenges and recommend corrective measures, as necessary. (See paragraph 249 in Section 1.1.2 of Chapter II of this report.)

1.1.3.32 Keep detailed, annual statistics on the results of selection processes in the Office of the Attorney General, so as to know which personnel entered the service by means of public merit-based competitions, other processes, or by direct appointment; how many entered under different headings; whether there were successive renewals in cases of temporary appointments under other headings, including service contracts, and for what length of time; as well as how many selection procedures were challenged, and what the outcomes of those challenges were, in order to identify challenges and recommend corrective measures, as necessary. (See paragraphs 250 to 251 in Section 1.1.2 of Chapter II of this report.)

1.1.3.33 Consider adopting the measures, procedures, and provisions needed to regulate the recruitment of all Office of the Attorney General (MP) personnel under those headings currently lacking them, with a view to ensuring that as a general rule entry into the MP is based on merit and governed by the principles of openness, equity, and efficiency upheld in the Convention. (See paragraphs 252 to 253 in Section 1.1.2 of Chapter II of this report.)

1.1.3.34 Conduct a study to determine the reasons for the increased number of non-permanent personnel appointments in the Office of the Attorney General, in order to make sure that those types of appointment are not being used to obviate merit-based competition requirements. (See paragraph 254 in Section 1.1.2 of Chapter II of this report.)

1.1.3.35 Endow the Office of the Attorney General, subject to available resources, with the human and budgetary resources needed to ensure that it is in a position to fully comply with its function of conducting merit-based competitive processes. (See paragraph 254 in Section 1.1.2 of Chapter II of this report.)
1.1.3.36 Keep detailed, annual statistics on the results of selection processes in the municipalities, so as to know which personnel entered the service by means of public merit-based competitions, other processes, or by direct appointment; how many entered under different headings; whether there were successive renewals in cases of temporary appointments under other headings, including service contracts, and for what length of time; as well as how many selection procedures were challenged, and what the outcomes of those challenges were, in order to identify challenges and recommend corrective measures, as necessary. (See paragraph 256 in Section 1.1.2 of Chapter II of this report.)

1.2. Systems for government procurement of goods and services

1.2.1. Follow-up on implementation of the recommendations formulated in the Second Round

Recommendation 1.2: Strengthen government procurement systems

Measure a) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:
Adopt appropriate measures to ensure the requisite harmony for the management of diverse procurement systems, so that there is clarity both with respect to the scope of application of the regulations that govern each of them and as regards their concurrent operation, in the cases were provision is made for this, taking into account, to that end, the principles of openness, equity and efficiency provided in the Convention.

[258] During the on-site visit, the State under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to its satisfactory implementation:

[259] - The amendment of Articles 1 and 54 of the Government Procurement Law, which now read as follows:

[260] ‘‘ARTICLE 1. Purpose and scope of the law* The purpose of this Law is to regulate purchases, sales, hiring, leasing, or any other form of government procurement by:

[261] “a) State agencies;

[262] b) Decentralized and autonomous, including municipalities; entities

[263] c) Entities or enterprises, regardless of organizational structure, a majority of whose capital derives from State contributions;

[264] d) Nongovernmental organizations and any nonprofit entity receiving, administering, or executing government funds. Exceptions are: Parents’ Organizations (OPF), Committees, Educational Councils, and School Boards of the Ministry of Education for school support programs; and grants and subsidies for cost-free private educational facilities;

[265] e) All entities of any kind, all or part of whose revenue derives from State resources, subsidies, or contributions;

[266] f) Trust funds constituted with public funds and social funds;

70 Available at: http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_gtm_anexo21.pdf
g) All other institutions pertaining to the public sector.

The above entities shall be subject to the present Law, its enabling regulations, and procedures established by the Office of the Director General of Government Procurement in the Ministry of Public Finance, within its sphere of competence with respect to the use of public funds. The enabling regulations shall establish the procedures applicable to the entities mentioned under letters d), e), and f).\textsuperscript{71}

\textsuperscript{71} This procedure was established in Article 25 of the Enabling Regulation analyzed under “New Developments.”

In procurement processes conducted using foreign loan funds derived from public credit operations or grants to the State, its dependencies, institutions, or municipalities, the polices and procedures established by the financial institutions or donors shall be applied and these provisions shall be regarded as a special norm. The provisions contained in the present Law shall be applied to complement the above, provided that they no not affect or contradict the procurement poises and procedures established by the financial institutions or donors. If said financial institutions or donors do not have regulations established to that end, the provisions of the present Law shall apply. In all procurement carried out using foreign loan funds from public credit operations, the executing agency shall be responsible for ensuring that competitive bidding processes are followed. In all instances, use of the electronic government hiring and procurement system, GUATECOMPRAS, shall be mandatory. In (physical) works contracts, all dissemination indicators contained in the Construction Sector Transparency (COST) Initiative must be observed and complied with.

\textsuperscript{70} The provisions of the foregoing paragraph shall also be applicable in cases in which there is a national counterpart in cash.

\textsuperscript{71} Amended by Article 2 of Congressional Decree No. 11-2006 of May 30, 2006.

\textsuperscript{72} Amended by Article 1 of Congressional Decree No. 9-2015 of December 16, 2015.

\textsuperscript{73} The third and fourth paragraphs are amended by Article 1 of Congressional Decree No. 46-2016 of October 28, 2016.

\textsuperscript{74} “ARTICLE 54.* Transparency in the use of public funds and other contracts Nongovernmental organizations, associations, foundations, community councils, cooperatives, committees, regional and international organizations, trust funds, and any private sector or mixed, national or foreign entity that receives and/or administers public funds must publish in, and channel through, GUATECOMPRAS, all their purchases, hiring or procurement when they exceed the direct purchase amount established in this Law. To that end, they shall publish, at a minimum: the basic documents or terms of reference, technical specifications, evaluation criteria, questions, replies, list of bidders, certificates awarding contract, and the contracts. They must also use competitive procurement procedures and evaluate bids based on impartial and public criteria.

The Office of the Comptroller General of Accounts must audit the negotiations and all contracts signed pursuant to this Article. In order to be valid and executable, they must be registered with that Office’s Registry of Contracts.

If irregularities are detected during audits, the Office of the Comptroller General of Accounts shall report them to the agencies concerned (depending on the subject matter), after having exhausted the corresponding administrative procedure.

In direct purchase cases, the provisions of Article 43 of this Law shall apply.
In contracts and agreements entered into by entities governed by this Law, that do not derive from procedures established therein, ordinary law provisions (normas del derecho común) shall apply, with the respective negotiations and contract being published and channeled through GUATECOMPRAS. The enabling regulations to this Law shall establish the corresponding terms and conditions.

* Amended by Article 14 of Congressional Decree No. 27-2009 of September 17, 2009. ” 2015.

In that regard, the Committee recalls that the foregoing recommendation dates back to the report from the Second Round, on which occasion the Committee made the following observation:

"First, the Committee notes that under the provisions of Article 1, paragraph 1 of the Law on State Contracting, this Law applies to all government contracts; however, pursuant to paragraph 2 of this Article, there are, at the same time, contracts that, having been entered into under the aegis of international conventions and treaties, are exempt from the provisions contained in this Law, which shall only be applied to those contracts in a supplementary manner provided it do not run contrary to said treaties or conventions.

Similarly, in accordance with Article 54 of the Law on State Contracting, contracts entered into by State entities that do not originate from procedures set forth in this Law, or in which the administrative entity acts as a person governed by private law, are not governed by this law but by the provisions of ordinary law.

The Committee understands that the origin of the existence of special procurement systems may lie in international conventions and treaties, or be grounded in the unique and specialized nature of certain types of contract; however, it also believes that it would be advisable for the country under review to consider adopting appropriate measures to ensure the requisite harmony for the management of diverse procurement systems, such that there is clarity both with respect to the scope of application of the regulations that govern each of them and as regards their concurrent operation, in the cases where provision is made for as much, taking into account, to that end, the principles of openness, equity and efficiency provided in the Convention. The Committee will formulate a recommendation in this regard.

In that regard, the Committee observes that the revised versions of Articles 1 and 54 contain the following considerations that were not contemplated in the previous legislation analyzed during the Second Round and which help to achieve the harmonization required to handle the various different procurement regimes by clearly establishing the scope of application of each regime’s regulations and how they may combine, in cases where that is required, as analyzed below.

First, the Committee observes that the revised text of Article 1 explains more clearly and at greater length the scope of its application, including not only public sector institutions but also all those that receive, handle, or administer public funds, as evidenced in its paragraphs a) to f).

Second, the Committee notes that the third paragraph of this revised Article provides that the executing agency shall be responsible for ensuring that all procurement using foreign loan funds derived from public credit operations or grants to the State shall use competitive bidding processes; that in all cases use of the electronic government hiring and procurement system, GUATECOMPRAS, shall be mandatory; and that these provisions shall also apply in cases in which there is a national counterpart in cash. These considerations were not present in the previous legislation, particularly as regards procurement processes that might stem from international agreements and treaties.

Third, the Committee notes that the new text of Article 54 establishes the minimum documentation to be furnished by nongovernmental organizations, associations, foundations, community councils, cooperatives,

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committees, regional and international organizations, trust funds, and any private sector or mixed, national or foreign entity that receives and/or administers public funds, and establishes the obligation to publish it in, and channel the procurement through, GUATECOMPRAS. It also determines that the Office of the Comptroller General of Accounts shall be the entity supervising the negotiation of all contracts signed pursuant to that Article and makes their validity and execution dependent upon their being registered said Office.

[288] Along the same lines, it establishes, with respect to contracts and agreements entered into by entities regulated by the Government Procurement Law, that although ordinary law provisions shall apply, the corresponding negotiations and contract have to be channeled through GUATECOMPRAS.

[289] In light of the above, and without prejudice to any recommendations that may arise from comprehensive analysis of the Government Procurement Law and its Enabling Regulations in the “New Developments” section, the Committee notes that satisfactory consideration has been given to measure a) in the above recommendation.

Measure b) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

Establish a standard procedure for procurement conducted through the special system of direct purchase provided for in the Law on State Contracting, that applies to all State entities, taking into account, to that end, the principles of openness, equity and efficiency enshrined in the Convention.

[290] During the on-site visit, representatives of the Office of the Director-General of Government Procurement (DGAE) presented information and new developments with regard to the above measure. In this regard, the Committee notes the following as a step that indicates satisfactory consideration of the measure:73

[291] – The amended Government Procurement Law, Article 43 of which establishes the specific types of government procurement, including the exceptional direct purchase option, and lists in detail the standard procedures for each of them, which include: a) low volume purchases; b) direct purchases; c) procurement from a single provider; d) leasing of furniture and equipment; e) the leasing and purchase of real estate; and f) dredging [el dragado]. Thus, the Committee observes that standard procedures for these kinds of procurement include, inter alia, the obligation to process them and publish all the information regarding them via GUATECOMPRAS.74

[292] In that regard, the Committee recalls that the foregoing recommendation dates back to the analysis from the Second Round, on which occasion the Committee made the following observation:

[293] “Second, the Committee observes that Article 43 of the Law on State Contracting affords the superior administrative authority of the entity concerned the power to use the special system of direct purchase as the contracting procedure. The Committee believes that it would be useful for the country under review to consider the establishment of a standard procedure for such procurement applicable to all State entities, taking into account, to that end, the principles of openness, equity and efficiency provided in the Convention, such that the procurement operation is not subject to the procedure that the superior administrative authority of the state entity concerned might choose at their discretion but to said standard procedure. The Committee will formulate a recommendation in this regard.”75

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[294] In light of the above, and without prejudice to any recommendations that may arise from comprehensive analysis of the Government Procurement Law and its Enabling Regulations in the “New Developments” section, the Committee notes that satisfactory consideration has been given to measure b) of the above recommendation.

Measure c) suggested by the Committee, which requires additional attention, as envisaged in the Third Round report:
Define the concepts of national interest or social benefit on which to base the declaration that the respective president of each branch of government is required to issue when this special procurement procedure is used, as well as the classification in that regard that the branch of government, ministry, or entity concerned must adopt.

[295] During the on-site visit, the State under review presented information on the above measure, based on which the Committee concludes that said measure has been superseded:

[296] – The amended Government Procurement Law, Article 44 of which deleted paragraph 1.3, which addressed the purchase and procurement of goods, supplies, works, and services “that are urgently needed to resolve situations of national interest or benefiting society,”76 provided that they are declared to be such in a decision taken by the heads of each of the State agencies concerned.77

[297] In that regard, the Committee recalls that the foregoing recommendation dates back to the analysis from the Second Round, on which occasion the Committee made the following observation:

[298] “Third, the Committee observes that Article 44 (1.3) of the Law on State Contracting provides that an exception to the obligations to use the public tender and purchasing procurement methods, are the purchase and contracting of goods, supplies, works, and services that are necessary and urgent to resolve situations of national interest or social benefit, provided that the foregoing is declared as such in a decision adopted by the respective president of each branch of government. The Article also mentions that the branch of government, ministry or entity concerned shall be liable for the classification they declare in each instance and are required to accompany the decision adopted with all the supporting information.

[299] “With respect to the foregoing, the Committee believes that it would be advisable for the State under review to consider the adoption of a definition of the concepts of national interest or social benefit on which to base the declaration that the respective president of each branch of government is required to issue when this special procurement procedure is used, as well as the classification in that regard that the branch of government, ministry, or entity concerned must adopt. The Committee considers that this would help to ensure better guidelines with respect to what could be regarded as a situation of national interest or social benefit for the purposes of government procurement, and so prevent the use of this special procedure to avoid the public tender or purchasing procurement methods.”

[300] Given that Article 44 (1.3) of the Government Procurement Law has been repealed, and without prejudice to any recommendations that may arise from comprehensive analysis of the Government Procurement Law and its Enabling Regulations in the “New Developments” section, the Committee consider that measure c) of this recommendation is no longer relevant.

Measure (d) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

76 Underlining added.
Strengthen the governing organ for government procurement so that its scope is not limited to the central government and its decentralized and autonomous entities, but encompasses all State entities governed by the Law on State Contracting.

[301] In its response, the State under review presented information on the implementation of measure b) of the above recommendation. The Committee notes, in that regard, that the information provided referred to the structure and functions of the Regulatory Directorate for Government Procurement of the Ministry of Finance, which no longer exists following the restructuring of that Ministry as a result of the amendments to the Government Procurement Law, and that it has been replaced by the Office of the Director General of Government Procurement (DGAE) in its capacity as a supervisory entity of GUATECOMPRAS, which now has new powers and functions.

[302] That being so, and without prejudice to the recommendations that may be made in Section 1.1.2 of Chapter II of this report, which will contain an updated and detailed analysis of current legislation with regard to systems for government mechanisms of goods and services, the Committee reaffirms the contents of that section and considers that said measure has ceased to be relevant.

Measure (e) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

Adopt, through the appropriate authority, pertinent measures to ensure that municipalities comply with the obligation provided for by Article 8 of the Regulations of the Law on State Contracting to publish information on their procurement activities on the Internet website of the GUATECOMPRAS System.

[303] The State under review did not provide information or present new developments regarding measures adopted to ensure that municipalities abide by their obligation, under the Government Procurement Law, to post the contracts they enter into on the GUATECOMPRAS portal. Nor were statistics provided to show whether all municipalities are meeting that obligation. Furthermore, there were no representatives from municipalities present during the on-site visit to provide information in that regard.

[304] Nevertheless, representatives of the Office of the Director General of Government Procurement were present. They reported that now the obligation of all entities subject to the Government Procurement Law to post information on the contracts they enter into on the GUATECOMPRAS portal is contemplated in Article 4 bis of the Government Procurement Law and not in Article 8 of the Enabling Regulations to the Government Procurement Law, following amendments to both regulatory instruments.

[305] In this regard, the Committee points out that this recommendation dates back to the analysis conducted in the Second Round, when it transpired that, according to the municipality statistics posted on the GUATECOMPRAS Internet Portal, not all municipalities were fulfilling their obligation to publish details of their contracts on the Portal.

[306] With that in mind, the Committee notes the need for the State under review to pay additional attention to implementing the measure referred to in the above recommendation and, at the same time, believes that it would be appropriate to rephrase it more clearly given the change in legislation, which now

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78 Report on Guatemala from the Second Round, p. 27.
79 In a document presented on August 12, 2019, the State under review submitted statistical information on the use of the GUATECOMPRAS system by municipal authorities, but since it was presented after the deadline it was not analyzed.
80 See the PowerPoint presentation of the Office of the Director of Government Procurement.
http://www.oas.org/es/sla/dlc/mesicic/paises-rondas.html?c=Guatemala&r=5 No representatives of the municipalities were present during the on-site visit.
refers to that obligation in Article 4 bis of the Government Procurement Law and not on its new enabling regulations. (See Recommendation 1.2.3.1 of Section 1.1.3 of Chapter II of this report.)

[307] On the other hand, it is to be noted that, in the parallel document presented in connection with Article 34, the civil society organization “Acción Ciudadana” pointed out that:²²

[308] “Municipalities regularly make purchases without tenders. The most commonly used practice is to use the “exceptional” direct purchase option. That generates conditions conducive to illicit, non-transparent, and, in some cases, corrupt purchases. (https://cerigua.org/article/54-municipalidades-senaladas-de-cometer-ilicitos).”

Measure (f) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round: Adopt through the appropriate authority, pertinent measures to ensure that challenges presented by users of the “GUATECOMPRAS” system receive a timely response.

[309] Both in its response and during the on-site visit, the State under review presented information and reported new developments in relation to the above measure. In that regard, the Committee notes the following as steps that contribute to progress in its implementation:³³

[310] – “As the governing body in the GUATECOMPRAS system, the Regulatory Directorate for Government Hiring and Procurement has taken appropriate steps in the form of a series of actions within the system to ensure efficient operational responses to complaints. They include the bulletin monitoring complaints that have not yet been addressed by the legal deadline for doing so. That bulletin is automatically e-mailed to all users of the comptroller profile. The complaints module also contains a report on complaints not resolved by the legal deadline.

[311] “In addition, a weekly bulletin is sent to the comptroller’s office listing entities that have not replied to complaints within the time allowed.”³⁴

[312] – Article 35 of the Government Procurement Law, amended by Article 6 of Congressional Decree No. 27-2009, establishes that “Notifications derived from acts under the present Law shall be made electronically via GUATECOMPRAS and shall take effect on the day following their publication in said system.

[313] “Anyone dissatisfied with any act contravening the procedures regulated by the present Law, its enabling regulations, or the rules of procedure of the registries may file his or her complaint(s) via GUATECOMPRAS.

[314] “Complaints relating to awards made by the Board may only be filed within five (5) calendar days following publication of the award in GUATECOMPRAS.

[315] “Both the Board and the procuring entity receiving a complaint must respond to it through GUATECOMPRAS within no more than five (5) calendar days of its being filed.

[316] “The Board may only amend its decision as a result of a complaint within the time specified. Since that decision is not final, no appeal may be brought against it.

²² Parallel document presented by “Acción Ciudadana,” p. 34.
³³ Response of Guatemala to the questionnaire for the Fifth Round, p. 56.
³⁴ http://www.guatecompras.gt/Inconformidad/consultaAvInc.aspx?opt=Home
“A complaint may, in due course, be filed against the final resolution handed down by the procuring entity. The enabling regulations will specify applicable procedures to that end.”

– Inclusion of the complaints module in the GUATECOMPRAS Portal and the imposition of administrative sanctions for failure to address them.

The Committee also takes note of the statistics furnished by the Ministry of Finance during the on-site visit regarding complaints filed, those currently being reviewed, those accepted, and those denied over the past five years.

<table>
<thead>
<tr>
<th>Year filed</th>
<th>Under review</th>
<th>Accepted</th>
<th>Denied</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>245</td>
<td>914</td>
<td>1,836</td>
<td>2,995</td>
</tr>
<tr>
<td>2018</td>
<td>302</td>
<td>2,539</td>
<td>7,841</td>
<td>10,682</td>
</tr>
<tr>
<td>2017</td>
<td>163</td>
<td>2,340</td>
<td>6,684</td>
<td>9,187</td>
</tr>
<tr>
<td>2016</td>
<td>178</td>
<td>1,853</td>
<td>5,547</td>
<td>7,758</td>
</tr>
<tr>
<td>2015</td>
<td>69</td>
<td>1,098</td>
<td>2,748</td>
<td>3,915</td>
</tr>
<tr>
<td>Total</td>
<td>957</td>
<td>8,744</td>
<td>24,656</td>
<td>34,357</td>
</tr>
</tbody>
</table>

Regarding the above statistics, the Committee takes note of the steps taken by the State under review and of the need for it to continue to give attention to implementing the above recommendation for the following reasons:

First, the Committee notes that during the on-site visit representatives of the Office of the Director General of Government Procurement pointed out that, although Article 35 of the Law establishes deadline for the institutions to reply to complaints and even though Article 88 of the same Law establishes fines for noncompliance, not all institutions meet those deadlines.

Second, regarding the above statistical Table on complaints, while it does show the number of complaints filed, under review, accepted, or denied in the past five years, it does not show how many were addressed in the time allowed, how many were answered after the deadline, and how many were never addressed. This is especially important given that the Board may change its decision only within the time specified and its ruling cannot be appealed.

85 See [http://www.guatecompras.gt/info/inconformidad/queEsInconformidad.aspx](http://www.guatecompras.gt/info/inconformidad/queEsInconformidad.aspx)


87 Article 88 of the Government Procurement Law provides that: “The fines referred to in this Law and its enabling regulations shall be imposed by the Office of the Comptroller General of Accounts or by the Superintendency of Banks, as the case may be, in the case of Government official or employees; in the case of private individuals, the fines shall be imposed by the corresponding higher authority in accordance with the present law.”

88 Idem.
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[323] Bearing all that in mind, the Committee takes note of the steps taken by the state under review and of the need for the State to continue giving further attention to implementing the above measure. (See recommendation 1.2.3.2 in Section 1.1.3 of Chapter II of this report.)

[324] In addition, the Committee believes that it would be appropriate for the State under review to keep detailed annual statistics showing how many complaints were addressed within the time allowed and how many were addressed after the deadline had passed, how many were not addressed at all, how many were declared inadmissible as a result of late or non-existent administrative responses by the government institution required to address them, because such information would help identify challenges and facilitate the adoption of corrective measures, where necessary. The Committee will make a recommendation. (See recommendation 1.2.3.3 in Section 1.1.3 of Chapter II of this report.)

[325] Finally, the Committee observes that Article 35 of the Government Procurement Law provides that the Board may only amend its decision as a result of a complaint within the time allowed and that, since that decision is not final, no appeal may be lodged against it. In that regard, the Committee believes that it would be appropriate for the State under review to consider establishing a second instance option for contesting those decisions. The Committee will make a recommendation. (See recommendation 1.2.3.4 in Section 1.1.3 of Chapter II of this report.)

1.2.2. New developments regarding government procurement of goods and services

1.2.2.1. Developments in the regulatory framework

a. Scope

[326] – Amendment of the Government Procurement Law, Article 1 of which reads as follows: “ARTICLE 1: Purpose and scope of the law The purpose of this Law is to regulate purchases, sales, hiring, leasing, or any other form of government procurement by:

[327] “a) State agencies;

[328] b) Decentralized and autonomous, including municipalities; entities

[329] c) Entitities or enterprises, regardless of organizational structure, a majority of whose capital derives from State contributions;

[330] d) Nongovernmental organizations and any nonprofit entity receiving, administering, or executing government funds. Exceptions are: Parents’ Organizations (OPF), Committees, Educational Councils, and School Boards of the Ministry of Education for school support programs; and grants and subsidies for cost-free private educational facilities;

[331] e) All entities of any kind, all or part of whose revenue derives from State resources, subsidies, or contributions;

[332] f) Trust funds constituted with public funds and social funds;

[333] g) All other institutions pertaining to the public sector.

[334] The above entities shall be subject to the present Law, its enabling regulations, and procedures established by the Office of the Director General of Government Procurement in the Ministry of Public
Finance, within its sphere of competence with respect to the use of public funds. The enabling regulations shall establish the procedures applicable to the entities mentioned under letters d), e), and f).  

[335] In procurement processes conducted using foreign loan funds derived from public credit operations or grants to the State, its dependencies, institutions, or municipalities, the policies and procedures established by the financial institutions or donors shall be applied and these provisions shall be regarded as a special norm. The provisions contained in the present Law shall be applied to complement the above, provided that they no not affect or contradict the procurement poises and procedures established by the financial institutions or donors. If said financial institutions or donors do not have regulations established to that end, the provisions of the present Law shall apply. In all procurement carried out using foreign loan funds from public credit operations, the executing agency shall be responsible for ensuring that competitive bidding processes are followed. In all instances, use of the electronic government hiring and procurement system, GUATECOMPRAS, shall be mandatory. In (physical) works contracts, all dissemination indicators contained in the Construction Sector Transparency (COST) Initiative must be observed and complied with.

[336] The provisions of the foregoing paragraph shall also be applicable in cases in which there is a national counterpart in cash.”

[337] Article 4 bis reads as follows: “Government Hiring and Procurement Information System. The Government Hiring and Procurement Information System known as GUATECOMPRAS is a system to ensure transparency and efficiency in government procurement. Consulting it shall be public, unrestricted, and cost-free, and it will provide information in electronic and open data formats on the mechanisms and provisions regulated by this Law and its enabling regulations.

[338] The system shall be developed, administered, and regulated by the Ministry of Public Finance as the system’s governing body and its use shall be mandatory for all those subject to this Law, for purchases, sales, hiring, leasing, or any other form of government procurement. Information relating to all stages of the government procurement process; and all codifications or catalogues established for government procurement must be posted in the system.

[339] The GUATECOMPRAS system shall provide the tools needed to ensure that information is published and provided in full and in a timely fashion, as required by its governing body, by continuously and actively incorporating the tools and electronic forms needed for each phase of the government procurement process, including contracting, execution, and settlement. The electronic and digital information to be published in the system shall include at least the following: calls for bids, reception of bids, clarifications, complaints, responses, amendments, offers, awards, contracts and amendments thereto, variations or amplifications, surety bonds, and any supporting documentation in the procurement file until procurement is completed. No government official shall limit, alter, or restrict the public information that the GUATECOMPRAS system must contain.

[340] Persons subject to the present Law shall publish in the GUATECOMPRAS system all the information mandated under current regulations, by the deadlines established in the rules, regulatory provisions, and corresponding resolutions.

[341] The use of electronic forms shall be mandatory in all government procurement systems.

[342] Government procurement schedules and any amendments thereto must be published in GUATECOMPRAS, and may be adjusted as necessary by a higher authority via a duly substantiated resolution.

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89 This procedure was established in Article 25 of the Enabling Regulations to the Government Procurement Law.
The GUATECOMPRAS system shall permit access to other government procurement-related records and systems.

Failure by GUATECOMPRAS users to comply with the provisions of this Article shall be punished in accordance with Article 83 of the present Law.

Article 9, on competent authorities, establishes, both in cases in which the amount involved does not exceed nine hundred thousand quetzales (Q.900,000.00) and in those in which it does, the competent authorities for the legislative branch, the Judiciary; the Constitutional Court and the Supreme Electoral Tribunal; the executive branch, including the Office of the President and Vice President and dependencies attached to them, the Ministries and Secretariats of the Office of the President of the Republic and other central government dependencies or entities not attached to another Offices; decentralized and autonomous State entities with legal person status; the municipalities and their enterprises; entities or enterprises in which a majority of the capital derives from State contributions; nongovernmental organizations or nonprofits receiving, administering, or executing government funds; entities of any kind whose revenue derives from State funds, subsidies, or contributions; trust funds constituted with government funds and social funds; and any other entity or institution subject to the Law not contemplated in the foregoing numbered paragraphs. It adds that in cases not provided for in said Article the higher authority or higher administrative authority shall be construed to means that established in the contract, agreement, internal rules of procedure, or those indicate in the internal organizational structure of the entity concerned.

Article 15 establishes the Office of the Director General of Government Procurement and defines its powers and functions as follows: “The Office of the Director General of Government Procurement is the governing body for public procurement, responsible for facilitating processes and proposing or approving regulations within its sphere of competence. The objective of the Office of the Director General of Government Procurement is to strive to ensure that government procurement is conducted within a general framework of transparency, certainty, efficiency, and competence. Its functions include:

- a. Serving as the governing body for government procurement and for the Government Hiring and Procurement Information System, GUATECOMPRAS;
- b. Designing, administering, regulating, and implementing the policies needed to develop GUATECOMPRAS;
- c. Establishing procedures for appropriate enforcement of the laws governing government procurement;
- d. Coordinating the open contract form of procurement;
- e. Deciding how to use the funds earmarked for the Office of the Director to strengthen, develop, and modernize government procurement systems, processes, and procedures;
- f. Periodically training public sector entities in government procurement procedures;
- g. Certifying government officials or employees responsible for procurement in entities subject to the present Law;
- h. Requiring all public sector entities to submit their annual procurement program via the GUATECOMPRAS system, with a view to optimizing it and compiling or amending statistics;
“i. Standardizing government entities’ procurement processes;

j. Generating statistics that the general public can access and keeping them up to date;

k. Other functions established by regulations, the law, and the office of the minister, within their spheres of competence.”

Article 17 establishes that “When the total amount of the goods, supplies, and works exceeds the quantities established in Article 38, the procurement or contracting must be done through Public Tender, except in the exceptional cases indicated in Chapter III of Title III of the present law. If the amount does not exceed said quantities, the procurement shall be subject to price quotation or direct purchase requirements, pursuant to this law and its enabling regulations.”

Article 23 establishes, inter alia, that calls for tenders must be posted in GUATECOMPRAS and published once in the official gazette by specified deadlines. It adds, with respect to international agreement and treaties to provisions to which Guatemala is a Party, that their provisions shall also apply, supplementing domestic provisions, provided that they do not contradict the contents of the present Article. Article 28 establishes the criteria to be used to appraise bids.

Article 30 provides as follows: ‘Procurement contracts derived from States of Emergency declared in accordance with the Public Order Law. Once the state of emergency has been declared, bids for this type of contract shall be elicited through GUATECOMPRAS, unless its use is precluded by the emergency that gave rise to the declaration of a state of emergency.’

Article 38 establishes the amount for using the price quotations system, stipulating that “when the price of the goods, works, or supplies, or the remuneration for services exceeds ninety thousand quetzales (90,000.00) but does not exceed the following amounts, the procurement or hiring may be done via the price quotation system, as follows: a) For municipalities, when the amount does not exceed nine hundred thousand quetzales (Q.900,000.00); b) For the State and other entities, when it does not exceed one hundred thousand quetzales (Q.900,000.00).”

Article 39 establishes the price quotation procedure, which consists of requesting, through public competition via GUATECOMPRAS, final price bids from legally authorized suppliers in a condition to sell or lease the goods, supplies, works, or services required.

Article 43 establishes specific types of purchases and the procedures applicable to them. Those purchases include: low-volume purchases, entailing direct acquisition of goods, supplies, works, and services, which is exempt from the competitive process requirements applicable to all other forms of government procurement covered by the present Law, when the amount acquired is up to twenty-five thousand quetzales (Q.25,000.00); direct purchase, which consists of the acquisition of goods, supplies, works, and services, through an electronic bid in the GUATECOMPRAS system, without going through tendering or price quotation procedure, when the acquisition is for amounts above twenty-five thousand quetzales (Q.25,000.00) but not more than ninety thousand quetzales (Q. 90,000.00); purchase from a single provider, which is when the good, service, product, or inputs to be acquired may, because of their nature and conditions, only be purchased from a single provider; and leasing of movable and immovable property; all of which must be processed through GUATECOMPRAS.

Article 44.a provides that: “Neither tenders nor price quotations shall be mandatory in contracting by government dependencies and entities, pursuant to the procedure to be established in the enabling regulations to this Law for the acquisition of goods, supplies, works, and services that are indispensable to be able to resolve circumstances derived from states of emergency declared in accordance with the Public Order law that have resulted in, or are about to result in, the suspension of public services.”
Article 45 establishes that acquisitions involving any of the specific forms of government procurement or states of emergency remain subject to all other provisions of this Law and its enabling regulations, and that for each process the documentation and information required by the GUATECOMPRAS system must be published.

Article 54 provides that: Nongovernmental organizations, associations, foundations, community councils, cooperatives, committees, regional and international organizations, trust funds, and any private sector or mixed, national or foreign entity that receives and/or administers public funds must publish in, and channel through, GUATECOMPRAS, all their purchases, hiring or procurement when they exceed the direct purchase amount established in this Law. To that end, they shall publish, at a minimum, the basic documents or terms of reference, technical specifications, evaluation criteria, questions, replies, list of bidders, certificates awarding contract, and the contracts. They must also use competitive procurement procedures and evaluate bids based on impartial and public criteria.

The Office of the Comptroller General of Accounts must audit the negotiations and all contracts signed pursuant to this Article. In order to be valid and executable, they must be registered with that Office’s Registry of Contracts.

If irregularities are detected during audits, the Office of the Comptroller General of Accounts shall report them to the agencies concerned (depending on the subject matter), after having exhausted the corresponding administrative procedure.

In direct purchase cases, the provisions of Article 43 of this Law shall apply.

In contracts and agreements entered into by entities governed by this Law, that do not derive from procedures established therein, ordinary law provisions (normas del derecho común) shall apply, with the respective negotiations and contract being published and channeled through GUATECOMPRAS. The enabling regulations to this law shall establish applicable terms and conditions.

Article 54 bis establishes the electronic reverse auction, including the process and conditions required for it, and provided, inter alia, that: “The electronic reverse auction is a dynamic form of government procurement of public works, contract-based construction, and standardized or approved goods and services operated within the GUATECOMPRAS system, in which authorized bidders compete publicly, electronically, and in real time, for a pre-established period of time, on the basis of a previously published benchmark price that will serve as an initial ceiling for the process. Bids during the competitive process may not put forward prices higher than the reference price; only bids lower than the one before may be accepted. The contract shall be awarded to the bid with the lowest price obtained during the process.”

Article 71 establishes the General Registry of Government Procurement and provides that: “The General Registry of Government Procurement is attached to the Ministry of Public Finance. Its purpose is to register national or foreign individuals or legal entities to be authorized as government contractors or suppliers for one of the forms of government procurement established in this Law. The Registry shall verify the financial and technical capacity, experience, and specialized know-how, needed to be a government contractor or supplier, in connection with the particular State business concerned. It shall have the interdisciplinary personnel and resources needed to be able to perform its functions objectively and to a high standard,

The Registry shall be responsible for overseeing and updating the information and rights of the persons registered and for ensuring that said information is relevant, safe, accurate, and open. The Registry shall be electronic and shall use state-of-the-art technology to ensure compliance with the Law on Access to Public Information, Congressional Decree No. 57-20008.
Through the Ministry of Public Finance, the executive branch shall issue the Registry’s Rules of Procedure, which shall include the fees users are to be charged. Those fees shall be used exclusively to finance the operation, strengthening, and modernization of the Registry. Via the Ministry of Public Finance, the General Registry of Government Procurement shall be authorized to enter into public contracts and technical and financial cooperation agreements.”

Article 72.a establishes the main features of the Registry, as follows: “i. It shall register, modify, update, and delete information electronically; ii. It shall operate by registering in standard electronic formats, as required by the Rules of Procedure. Notifications by the Registry shall also be issued electronically; iii. It shall be organized according to electronic volumes (libros electrónicos); iv. It shall use a personal electronic page system (sistema de folio electrónico personal); v. It shall be equipped with the security devices essential for electronic communications, including authentication or electronic certification of the existences of records; vi. It shall be interconnected with interfaces for obtaining and cross-comparing information in other entities and registries, including, among others: the General Registry of Property, the General Registry of Commerce of the Republic, the Intellectual Property Registry, the National Registry of Persons, the Consolidated Tax Registry, the Registry of Legal Entities, the Judiciary, the National Institute of Statistics, the Guatemalan Social Security Institute, the Supreme Electoral Tribunal, the Office of the Comptroller General of Accounts, government ministries and secretariats, and the decentralized and autonomous entities. It shall be entitled to request necessary information from State entities, which shall be required to furnish the information needed by the Registry, in the manner and with the periodicity requested, pursuant to applicable legislation; vii. It shall be equipped to collect the earmarked funds derived from the fees charged by the General Registry of Government Procurement; and viii. Any other features and functions established in the present Law and its enabling regulations.”

Article 72.b establishes that its functions shall be: “i. To verify the technical and financial capacity of the persons inscribed in the Registry. To that end, it may request the information and documentation needed, pursuant to the Rules of Procedure; ii. To file requests for disqualification of providers or contractors in accordance with the present Law, using the procedure established in the Rules of Procedure; iii. To take cognizance of, handle, and resolve cases processed; iv. To resolve any conflicts derived from the functions it performs, within its sphere of competence; v. Impose applicable penalties in accordance with this law and its enabling regulations; and vi. Any other functions established in the present Law and its enabling regulations.”

Article 75 establishes that the Registry shall contain at least the following electronic volumes: “a) Register of contractor pre-qualifications; b) Register of consultant pre-qualifications; c) Register of suppliers/providers; and d) Register of Contracts.”

Article 88 on fines establishes that: “The fines referred to in this law and its enabling regulations shall be imposed by the Office of the Comptroller General of Accounts or by the Superintendency of Banks, as the case may be, on government officials or employees; in the case of private individuals, the fines shall be imposed by the corresponding higher authority, pursuant to the present law.

When the appeals provided for in Articles 99 and 100 of the present law are filed and are declared to be manifestly frivolous and/or manifestly inadmissible, the person filing the appeal shall be fined one percent (1%) of the total amount of the negotiations, but in no case more than five thousand quetzales (Q.5,000.00).”

Article 99 provides that: “A motion or reconsideration shall proceed against resolutions handed down by an administrative authority of higher rank within the same ministry or decentralized or autonomous entity,” while Article 100 provides that: “Motions for reversal may be filed against resolutions handed down by ministries and against those issued by individual or collegiate higher administrative authorities of decentralized or autonomous entities.”
[381] – The amendment to the Enabling Regulations of the Government Procurement Law, Article 13 of which provides that: “Pursuant to Articles 15, 16, and 71-79 of the Law, the Ministry of Public Finance shall establish in its in-house Rules of Procedure any functions additional to those regulated in the Law to be performed by the Office of the Director-General of Government Procurement and the General Registry of Government Procurement. The Office of the Director-General of Government Procurement shall issue regulations governing the earmarked funds generated by payments for services rendered by the suppliers or contractors awarded contracts. Those provisions shall specify what services are subject to charges and the applicable fees, as well as the procedures for requesting and making payment. Through the Ministry of Public Finance, the executive branch shall issue the Rules of Procedure of the Registry establishing the fees its users are to be charged, which shall be earmarked to finance the Registry’s operations, strengthening, and modernization.”

[382] Article 25 establishes the following: “Procurement Procedure for Entities and Others regulated by Article 1.d), e), and f) of the Law. Those regulated by Article 1.d), e), and f) of the Law shall draw up a specific Procurement Manual, following the guidelines issued by the Office of the Director-General of Government Procurement, which shall establish at least the following: a) the entity’s internal organizational structure, determining its most senior authority, whose position shall be standardized as the Higher Administrative Authority responsible for procurement, for the purposes of the Law; and b) the competitive procurement and bid evaluation processes, using public and impartial criteria to carry out the various forms of procurement. They shall also use the procedure established in the Law for Low-Value Procurement and Direct Purchasing. For procurement exceeding the amounts applicable to those modalities, electronic bids must be requested and received in the specific module available in GUATECOMPRAS, pursuant to Article 54 of the Law.”

[383] – Governmental Decision No. 112-2018, which updates the Internal Organic Rules of Procedure of the Ministry of Public Finance, Article 78 of which provides as follows: “The General Registry of Government Procurement is the dependency responsible for registering national or foreign individual or legal entities for authorization as government contractors or suppliers/providers, in the forms of government procurement established in the Government Procurement Law; in addition, it is responsible for overseeing and updating the information and rights of the persons registered and for ensuring that said information is relevant, safe, accurate, and open. It shall also use state-of-the-art technology to ensure compliance with the provisions of the Law on Access to Public Information. Via the Ministry of Public Finance, it is empowered to enter into contracts and technical and financial cooperation agreements, which shall be public. Its functions shall be as follows: 1. To verify the technical and financial capacity of the persons inscribed in the Registry. To that end, it may request the information and documentation needed, pursuant to the Rules of Procedure; 2. To file requests for disqualification of providers or contractors in accordance with the Government Procurement Law, using the procedure established in its Rules of Procedure; 3. To take cognizance of, handle, and resolve cases processed, in accordance with applicable rules and regulations; 4. To resolve any conflicts derived from the functions it performs, within its sphere of competence; 5. To impose applicable penalties in accordance with this law and its enabling regulations; 6. To hear all matters related to resolving any applications for registration, updating, and pre-qualification filed with it by interested parties; 7. To formulate and approve the regulations, procedures, and guidelines needed to verify the technical and financial capacity of the persons and entities requesting its pre-qualification as eligible government providers/providers; 8. To hear all matters relating to the handling of requests to disqualify registered suppliers/providers, pursuant to applicable procedures and regulations; 9. To oversee correct application of the regulations, procedures, and guidelines relating to its operations; 10. To oversee the implementation and operations of the Registry’s electronic volumes, pursuant to the Government Procurement Law and its enabling regulations; 11. To ensure that the Registry’s electronic system is operational and performs the functions assigned to it; 12. To issues resolutions on the administrative cases processed by the Registry; 13. To hear all matters relating to conflicts derived from application of the regulations, procedures, and guidelines of the Registry in order to issue regulations in accordance with law; 14. To issue opinions and regulations needed to resolve conflicts arising from application of the regulations, procedures, and guidelines of the Registry, as needed; 15. To verify correct
application of the regulations, procedures, and guidelines of the Registry in connection with the imposition of penalties, as needed; 16. To propose, develop, and administer processes for overseeing and updating the information in the Registry and for ensuring that it is secure, well-kept, and open; 17. To coordinate the actions needed to generate interconnectedness and exchanges of information with other entities and thereby fulfill the Registry’s functions; 18. To establish mechanisms for training and counseling government entities on how best to use the Registry’s instruments and tools; 19. To exert its authority to ensure efficient use of the funds earmarked for the Registry, as well as full compliance with the regulations, procedures, and guidelines established for administering them; 20. To ensure correct application of the Registry’s Rules of Procedure; 21. To coordinate with the Office of the Director-General of Government Procurement and the Office of the Director for Training and Professional Development on developing regulations, processes, and technological solutions for strengthening the management of government procurement and hiring practices; 22. To perform any other functions established by Law and the Office of the Minister, within its sphere of competence.”

[384] Article 83 provides that: ‘The Office of the Director-General of Government Procurement is the governing body responsible for government procurement and for facilitating processes and proposing or approving regulations within its sphere of competence, while attempting to ensure that government procurement is conducted within a general framework of transparency, certainty, efficiency, and competence. Its functions are as follows: 1. To serve as the governing body for government procurement and for the Government Hiring and Procurement Information System, GUATECOMPRAS; 2. To design, administer, regulate, and implement the policies needed to develop the Government Hiring and Procurement Information System - GUATECOMPRAS; 3. To establish policies, regulations, and procedures to ensure proper enforcement of the laws governing public sector procurement; 4. To promote the inclusion of government procurement and hiring plans in budgeting and budget execution processes, within the framework of applicable regulations and systems; 5. To facilitate public access to government procurement systems information, including technological solutions; 6. To propose policies and strategies for fostering sustainable procurement and the participation of micro, small, and medium-sized enterprises in government procurement; 7. To coordinate the Open Contract procurement option; 8. To decide on the use to be made of funds earmarked for the Directorate for strengthening, developing, and modernizing government procurement systems, processes, and procedures; 9. To provide periodic training to public sector entities on government procurement procedures; 10. To certify government officials or employees responsible for procurement in entities subject to the Government Procurement Law; 11. To require all public sector entities to submit their annual procurement program via the Government Hiring and Procurement Information System - GUATECOMPRAS, with a view to optimizing it and compiling or amending statistics; 12. To standardize government entities’ procurement processes; 13. To generate statistics that the general public can access and keep them up to date; 14. To conduct research, explore innovative projects for applying best procurement practices, and perform market intelligence, so as to generate information about government procurement and implement mechanisms, tools, and instruments to facilitate optimal use of government resources; 15. To maintain constant technical coordination with other administrative units and dependencies, with a view to ensuring that procurement policies are conducive to efficiency in public expenditure; 16. To propose amendments to government procurement legislation; 17. To analyze procurement programming performance in each fiscal year by entities subject to the Government Procurement Law, so as to be able to substantiate it and support re-programming; 18. To issue resolutions penalizing suppliers or executing guarantees, when called upon to do so, as well as any other resolution within its sphere of competence; 19 To coordinate with the General Registry of Government Procurement and the Office of the Director for Training and Professional Development on establishing regulations, processes, and technological solutions for strengthening the management of government procurement and hiring practices; and 20. To perform any other functions assigned to it by law and the Office of the Minister within its sphere of competence.”

b. Observations
The Committee acknowledges that the new normative developments in this area are positive steps in terms of establishing legal and regulatory provisions on the systems for government procurement of goods and services. Nevertheless, the Committee deems it appropriate to make a number of observations in that regard:

First, the Committee notes that the revised Government Procurement Law expands its scope to all Government institutions and agencies, including not just public sector institutions but also all those that receive, handle, or administer public funds, and that it establishes the obligation of all of them to conduct their procurement processes through the GUATECOMPRAS system run by the Office of the Director-General of Government Procurement (DGAE) in the Ministry of Finance. In that regard, the Committee also notes that during the on-site visit, DGAE representatives pointed out that, although the amendment of the Law expands its coverage to other agencies, thereby strengthening its scope and that of GUATECOMPRAS, structurally the DGAE has not been strengthened enough, particularly given the volume of requests to attend to the public resulting from its expanded role.

On this, the DGAE representatives explained that although the Office had already begun to operate with its new structure, not all its teams had yet been put together and the Office still lacked sufficient personnel and technology to be able to fully perform its functions as the governing body of GUATECOMPRAS. For instance, they explained that the team running GUATECOMPRAS comprises only four people and that the technology it uses was devised in-house and insufficient to handle the volume of work created by the system.

In light of the above, the Committee believes that it would be appropriate for the State under review to consider bolstering the governing body for GUATECOMPRAS by endowing it, to the extent possible, with the human, budgetary, and technological resources needed for it to fully perform its governing body functions, operate the system, and ensure that it is sustainable. The Committee will make a recommendation. (See recommendation 1.2.3.5 in Section 1.1.3 of Chapter II of this report.)

On the other hand, it is to be noted that, in the parallel document presented in connection with Article 34, the civil society organization “Acción Ciudadana” pointed out that: “The GUATECOMPRAS Portal has problems locating providers/suppliers, competitive processes, and information. Nor does it show the whole transaction cycle. Essentially, the problem is technological and poses a challenge for achieving transparency in government procurement. (https://lahora.gt/fiscalizacion-traves-guatecompras-vez-mas-dificil/)”

Second, the Committee notes that Article 21 of the Government Procurement Law establishes the General Registry of Government Procurement, the purpose of which is to register national or foreign individuals or legal entities to be authorized as government contractors or suppliers for one of the forms of government procurement established in this Law. It also establishes that the Registry shall be electronic. However, the Committee observes that the aforementioned Registry is not yet fully up and running and does not yet have the electronic system needed for start-up. In that regard, during the on-site visit, the representatives of the Office of the Director General of Government Procurement pointed out that work was under way on setting up the Registry and that it was soon expected to be operational. On this matter, the Committee believes that it would be appropriate for the State under review to consider taking the

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90 Parallel document presented by “Acción Ciudadana,” p. 31.
91 In a document presented on August 12, 2019, the State under review made the following comment: “Note that the data search modules were redesigned to include a section where information can be retrieved in open data format (http://www.guatecompras.gt/info/consultaDocumentosEstadisticos.aspx) regarding announcement (invitation to bid), awarding of contract, and procurement. It includes a series of electronic forms for retrieving specific information useful for social audits.”
necessary steps to ensure that the General Registry of Government Procurement is fully up and running with, resources permitting, the human, budgetary, and technological resources it needs to fully perform its functions. (See Recommendation 1.2.3.6 of Section 1.1.3 of Chapter II of this report.)

[391] At the same time, representatives of the Office of the Director General of Government Procurement voiced their concern at the possibility that, once the General Registry of Government Procurement is fully in place, the information on contractors currently stored in GUATECOMPRAS could be lost, given that the two entities are separate and independent even though both are attached to the Ministry of Finance. They also pointed out that in their view the information on providers/suppliers currently available in GUATECOMPRAS could be much broader than the information in the Registry, because registration in the latter is voluntary, where the GUATECOMPRAS data are collected automatically. On this, the Committee believes that it would be appropriate for the State under review to consider taking suitable steps, where applicable, to implement coordination mechanisms between the two systems in order to ensure that the information on suppliers stored in GUATECOMPRAS is maintained and can be used by the General Registry on Government Procurement. The Committee will make a recommendation. (See recommendation 1.2.3.7 in Section 1.1.3 of Chapter II of this report.)

[392] Likewise, it is worth underscoring the fact that, during the on-site visit, the civil society organization “Acción Ciudadana” pointed out that GUATECOMPRAS had made technical changes and that the publication of its data had helped reveal significant cases of corruption. The representatives expressed concern that that information might no longer be published.

[393] Third, the Committee observes that Article 44.a provides that neither tenders nor price quotations shall be mandatory in contracting by government dependencies and entities, pursuant to the procedure to be established in the enabling regulations to this Law for the acquisition of goods, supplies, works, and services that are indispensable to be able to resolve circumstances derived from states of emergency declared in accordance with the Public Order Law that have resulted in, or are about to result in, the suspension of public services. In this regard, the Committee observes that the Public Order Law provides for the following states of emergency: State of Alert (Estado de Prevención) (Article 8); State of Alarm

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92 At the meeting of the subgroup on September 6, 2019, the State under review reported that on a date after April 11, 2019, the General Procurement Registry electronic system began operating and is now fully functional. Since this information was presented after the deadline, it was not analyzed.

93 In a document presented on August 12, 2019, the State under review made the following comment: “Via the Ministry of Public Finance, the State has taken every step required under Article 73 of the Government Procurement Law to ensure that the General Registry of Government Procurement and the Office of the Director-General of Government Procurement work together in a coordinated manner, in such a way as to complement each other’s work and make government procurement transactions both efficient and transparent. Pursuant to Article 3.e of Governmental Decision No. 170-2018, the Registry’s functions do not cover procurement and/or hiring by State institutions, dependencies, and entities in connection with execution of their budgets. That represents a technical strength of the Registry in that the process of registering and pre-qualifying providers/suppliers is independent of the actual management of procurement and neither represents nor exercises any influence on said processes. Making the most of the Registry’s key electronic capabilities, the Ministry of Public Finance has introduced very effective coordination mechanisms, so that currently the I.T. systems of the General Registry of Government Procurement and GUATECOMPRAS are interconnected and operationally complementary, tapping both the historical data in GUATECOMPRAS and the current, real-time data obtained by the General Registry of Government Procurement from the various government entities with which it is interconnected.”

94 In a document presented on August 12, 2019, the State under review made the following comment: “The information recorded in Guatecompras at each phase of the process corresponds to the regulatory framework in effect, so that procurement processes can be tracked. Thus, the System is developed and configured in such a way that none of the information published can be altered or deleted.”

95 Available at: https://www.congreso.gob.gt/wp-content/themes/congreso-wordpress-theme/downloads/04-marco-constitucional.pdf
Regarding the above, the Committee considers that Article 44.a is so broad that it allows a high level of discretionary freedom to resort to direct procurement without contemplating any procedure for distinguishing, for instance, between emergency procurement in the event of a natural disaster and entering into a contract for the repair of damage resulting from that disaster, whereby the latter could take months or even years to ensure effective and high-quality repairs and could include high-value contracts for public works that would not necessarily call for immediate award of contracts. Here the Committee believes that it would be appropriate for the State under review to consider adopting provisions establishing the processes required to limit the discretionary leeway that the current Government Procurement Law allows in respect of situations arising out of states of emergency declared pursuant to the Public Order Law. The Committee will make a recommendation. (See recommendation 1.2.3.8 in Section 1.1.3 of Chapter II of this report.)

In this regard, in the parallel document presented in connection with Article 34, the civil society organization “Acción Ciudadana” pointed out that: “There are a large number of direct purchases, at all levels of government, that are neither published nor transparent. The main threat, however, is posed by states of emergency prompted by climate-related crises and natural disasters, humanitarian crises, and political and security crises. Under state-of-emergency conditions, standardized transparent procedures are eschewed and it is left to the discretion of government officials to procure and issue contracts at will.”

Fourth, the Committee notes that the last paragraph of Article 54 of the Government Procurement Law provides that for contracts and agreements entered into by entities governed by this Law and that do not stem from procedures it establishes, ordinary law standards (normas del derecho común) shall apply, whereby the respective negotiation and contract shall be published and handled in GUATECOMPRAS, and that the Rules of Procedure shall establish the applicable terms and conditions. However, the Committee observes that the Rules of Procedure do not envisage any specific provision for regulating those terms and conditions and believes that it would be appropriate for the State under review to take the necessary steps to stipulate those conditions in the regulations on the subject. The Committee will make a recommendation. (See recommendation 1.2.3.9 in Section 1.1.3 of Chapter II of this report.)

Fifth, the Committee notes that Article 54 bis of the Law establishes the electronic reverse auction and defines the process and conditions for conducting it. However, the Committee observes that said process, while it has been activated within the GUATECOMPRAS system, is not being used regularly: it was used on only three occasions in 2017, and there had been no subsequent transactions at the time of the on-site visit. In that connection, the Committee believes that it would be appropriate for the State under review to consider taking the necessary steps to promote the use of the electronic reverse auction process, and it will make a recommendation to that effect. (See recommendation 1.2.3.10 in Section 1.1.3 of Chapter II of this report.)

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96 Parallel document presented by “Acción Ciudadana,” p. 29.
97 In a document presented on August 12, 2019, the State under review made the following comment: “The proposed new regulation governing use of the Guatecompras System contemplates the requirements for publishing negotiations under Article 54 of the Government Procurement Law.”
98 In a document presented on August 12, 2019, the State under review made the following comment: “In 2017, three contracts were awarded using the electronic reverse auction process and, due to implementation of the General Registry of Government Procurement, the I.T platform had to be re-designed. It should be available this year.”
In this regard, during the on-site visit, the civil society organization “Centro Internacional para Investigaciones en Derechos Humanos - CIIDH” pointed out, inter alia, that:

“The amendments respect key aspects of the government procurement system, such as the institutions that are subject to those regulations, procurement options, and the exceptions to their implementation.

In addition to new procedures for the procurement of goods and services, such as:

The electronic reverse auction: a dynamic option for government procurement of standardized or certified goods and services, operated in the GUATECOMPRAS system, for receiving bids that lower costs.”

The CIIDH representatives mentioned, in this regard, that the system was not being used regularly.

Sixth, the Committee notes that Article 88 of the Law fines those who file an appeal for reversal or reconsidered that is declared to be manifestly frivolous or manifestly inadmissible. Nevertheless, the Committee also noted that the provision does not define the cases or conditions that could lead to such a declaration and thereby affords a wide margin of discretion that could be used to discourage the filing of the appeals established in the Law. In that regard, the Committee believes that it would be appropriate for the State under review to take the necessary steps to limit that wide margin of discretion, so as to ensure that it does not become an obstacle to persons exercising their right under the Law to challenge administrative acts. The Committee will make a recommendation. (See recommendation 1.2.3.11 in Section 1.1.3 of Chapter II of this report.)

1.2.2.2. Results

During the on-site visit, the State under review presented Ministry of Finance statistics, including, in particular, the following:

<table>
<thead>
<tr>
<th>Procurement option/type</th>
<th>No. of competitive contracts awarded</th>
<th>Option (%)</th>
<th>Total amount awarded</th>
<th>% of Amount Awarded by Option (type of procurement)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electronic bid procurement</td>
<td>34,078</td>
<td>83,143</td>
<td>1,258,315,866,01</td>
<td>12,445</td>
</tr>
<tr>
<td>Price quotation (Art. 38 LCE)</td>
<td>4,200</td>
<td>10,247</td>
<td>1,883,224,164,77</td>
<td>18,625</td>
</tr>
<tr>
<td>Procedures regulated by Article 54 LCE</td>
<td>855</td>
<td>2,086</td>
<td>1,788,778,036,79</td>
<td>17,691</td>
</tr>
<tr>
<td>Procedures regulated by Article 44 LCE (Exceptions)</td>
<td>827</td>
<td>2,018</td>
<td>309,822,448,99</td>
<td>3,064</td>
</tr>
<tr>
<td>Public tender (Art. 17 LCE)</td>
<td>753</td>
<td>1,837</td>
<td>2,340,351,915,17</td>
<td>23,146</td>
</tr>
<tr>
<td>International Agreements and Treaties (Art. 1 LCE)</td>
<td>116</td>
<td>0,283</td>
<td>2,173,905,449,20</td>
<td>21,500</td>
</tr>
<tr>
<td>Direct Procurement in the Absence of Bids (Art. 32 LCE)</td>
<td>107</td>
<td>0,261</td>
<td>47,258,557,15</td>
<td>0,467</td>
</tr>
</tbody>
</table>

See the CIIDH PowerPoint presentation posted at: http://www.oas.org/es/sla/dlc/mesicic/paises-rondas.html?c=Guatemala&r=t=5
### Competitive awards of contract by procurement option in 2016

<table>
<thead>
<tr>
<th>Procurement option/type</th>
<th>No. of competitive contracts awarded</th>
<th>Option (%)</th>
<th>Total amount awarded</th>
<th>% of Amount Awarded by Option (type of procurement)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procurement with Electronic Bid (Art. 43.b LCE)</td>
<td>76,771</td>
<td>92,302</td>
<td>2,767,095,120,72</td>
<td>28,58</td>
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<tr>
<td>Price quotation (Art. 38 LCE)</td>
<td>4,489</td>
<td>5,397</td>
<td>2,073,290,474,74</td>
<td>21,42</td>
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<tr>
<td>Public tender (Art. 17 LCE)</td>
<td>879</td>
<td>1,057</td>
<td>2,529,944,330,96</td>
<td>26,13</td>
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<td>Direct Procurement in the Absence of Bids (Art. 32 LCE)</td>
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<td>0,493</td>
<td>80,921,955,23</td>
<td>0,84</td>
</tr>
<tr>
<td>Procedures regulated by Article 44 LCE (Exceptions)</td>
<td>251</td>
<td>0,302</td>
<td>228,274,714,70</td>
<td>2,36</td>
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<tr>
<td>Procedures regulated by Article 54 LCE</td>
<td>198</td>
<td>0,238</td>
<td>420,474,842,85</td>
<td>4,34</td>
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<tr>
<td>International Agreements and Treaties (Art. 1 LCE)</td>
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<td>0,179</td>
<td>1,088,129,805,94</td>
<td>11,24</td>
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<tr>
<td>Open Contract (Art. 46 LCE)</td>
<td>13</td>
<td>0,016</td>
<td>468,192,345,92</td>
<td>4,84</td>
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<tr>
<td>Grants (Art. 1 LCE)</td>
<td>6</td>
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<td>3,729,959,00</td>
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<td>4</td>
<td>0,005</td>
<td>20,285,852,85</td>
<td>0,21</td>
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<tr>
<td>Negotiations between Public Entities (Art. 2 LCE)</td>
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<td>0,002</td>
<td>258,218,46</td>
<td>0,00</td>
</tr>
<tr>
<td>Imported goods and supplies Art. 5 LCE)</td>
<td>1</td>
<td>0,001</td>
<td>912,60</td>
<td>0,00</td>
</tr>
<tr>
<td>Procedure Regulated by Art. 54 bis (Electronic Reverse Auction)</td>
<td>1</td>
<td>0,001</td>
<td>194,647,80</td>
<td>0,00</td>
</tr>
</tbody>
</table>

| Totals                                               | 83,174                               | 100        | 9,680,793,182        | 100                                               |

### Competitive awards of contract by procurement option in 2017

<table>
<thead>
<tr>
<th>Procurement option/type</th>
<th>No. of competitive contracts awarded</th>
<th>Option (%)</th>
<th>Total amount awarded</th>
<th>% of Amount Awarded by Option (type of procurement)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procurement with Electronic Bid (Art. 43.b LCE)</td>
<td>76,771</td>
<td>92,302</td>
<td>2,767,095,120,72</td>
<td>28,58</td>
</tr>
<tr>
<td>Price quotation (Art. 38 LCE)</td>
<td>4,489</td>
<td>5,397</td>
<td>2,073,290,474,74</td>
<td>21,42</td>
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<tr>
<td>Public tender (Art. 17 LCE)</td>
<td>879</td>
<td>1,057</td>
<td>2,529,944,330,96</td>
<td>26,13</td>
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<tr>
<td>Direct Procurement in the Absence of Bids (Art. 32 LCE)</td>
<td>410</td>
<td>0,493</td>
<td>80,921,955,23</td>
<td>0,84</td>
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<tr>
<td>Procedures regulated by Article 44 LCE (Exceptions)</td>
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<td>0,302</td>
<td>228,274,714,70</td>
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<tr>
<td>Procedures regulated by Article 54 LCE</td>
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<td>0,238</td>
<td>420,474,842,85</td>
<td>4,34</td>
</tr>
<tr>
<td>International Agreements and Treaties (Art. 1 LCE)</td>
<td>149</td>
<td>0,179</td>
<td>1,088,129,805,94</td>
<td>11,24</td>
</tr>
<tr>
<td>Open Contract (Art. 46 LCE)</td>
<td>13</td>
<td>0,016</td>
<td>468,192,345,92</td>
<td>4,84</td>
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<tr>
<td>Grants (Art. 1 LCE)</td>
<td>6</td>
<td>0,007</td>
<td>3,729,959,00</td>
<td>0,04</td>
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<tr>
<td>No procurement option</td>
<td>4</td>
<td>0,005</td>
<td>20,285,852,85</td>
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<tr>
<td>Negotiations between Public Entities (Art. 2 LCE)</td>
<td>2</td>
<td>0,002</td>
<td>258,218,46</td>
<td>0,00</td>
</tr>
<tr>
<td>Imported goods and supplies Art. 5 LCE)</td>
<td>1</td>
<td>0,001</td>
<td>912,60</td>
<td>0,00</td>
</tr>
<tr>
<td>Procedure Regulated by Art. 54 bis (Electronic Reverse Auction)</td>
<td>1</td>
<td>0,001</td>
<td>194,647,80</td>
<td>0,00</td>
</tr>
</tbody>
</table>

<p>| Totals                                               | 83,174                               | 100        | 9,680,793,182        | 100                                               |</p>
<table>
<thead>
<tr>
<th>Procurement option/type</th>
<th>No. of competitive contracts awarded</th>
<th>Option (%)</th>
<th>Total amount awarded</th>
<th>% of Amount Awarded by Option (type of procurement)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procurement with Electronic Bid (Art. 43.b LCE)</td>
<td>103,014</td>
<td>79,595</td>
<td>4,164,543,239,530</td>
<td>18,62</td>
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<tr>
<td>Procedures regulated by Article 54 LCE</td>
<td>9,534</td>
<td>7,367</td>
<td>2,776,550,192,240</td>
<td>12,41</td>
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<tr>
<td>Price quotation (Art. 38 LCE)</td>
<td>5,435</td>
<td>4,199</td>
<td>2,548,223,164,660</td>
<td>11,39</td>
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<td>Procedures regulated by Article 44 LCE (Exceptions)</td>
<td>3,757</td>
<td>2,903</td>
<td>1,463,216,338,710</td>
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<td>Leasing or purchase of real estate (Art. 43.e)</td>
<td>2,642</td>
<td>2,041</td>
<td>435,727,436,000</td>
<td>1,95</td>
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<td>Direct Procurement in the Absence of Bids (Art. 32 LCE)</td>
<td>1,580</td>
<td>1,221</td>
<td>270,271,915,740</td>
<td>1,21</td>
</tr>
<tr>
<td>Public tender (Art. 17 LCE)</td>
<td>1,539</td>
<td>1,189</td>
<td>7,899,880,115,770</td>
<td>35,31</td>
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<tr>
<td>Negotiations between Public Entities (Art. 2 LCE)</td>
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<td>0,804</td>
<td>807,749,969,150</td>
<td>3,61</td>
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<td>International Agreements and Treaties (Art. 1 LCE)</td>
<td>654</td>
<td>0,505</td>
<td>1,361,543,033,410</td>
<td>6,09</td>
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<td>Leasing through price quotation (Art. 43.d)</td>
<td>69</td>
<td>0,053</td>
<td>33,027,169,440</td>
<td>0,15</td>
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<td>66,785,694,360</td>
<td>0,30</td>
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<tr>
<td>Procurement from a single supplier (Article 43.c)</td>
<td>53</td>
<td>0,041</td>
<td>100,690,433,260</td>
<td>0,45</td>
</tr>
</tbody>
</table>

Totals: 97,916 contracts awarded | 100% | 19,693,465,946,480 | 100%
Grants (Art. 1 LCE) 19 0,015 14,007,633,270 0,06
Open Contract (Art. 46 LCE) 14 0,011 417,668,031,790 1,87
Leasing through Public Tender (Art. 43.d) 3 0,002 10,245,960,080 0,05
Dredging (dragados) (Art. 43.f) 3 0,002 167,950,000 0,00
Tendering of APP projects (Article 40, Decree 16-2010) 1 0,001 0,010 0,00

Totals 129,422 100 22,370,298,277,420 100

[405] Regarding the above statistical information provided by the State under review, the Committee observes that it is disaggregated by year and that the charts cover the 2015-2018 period. They show the number and percentage of competitively awarded contracts by type of procurement, and the amount and percentage of those awards, as well as the procurement options used, ranging from procurement via electronic bids, procedures regulated by Article 54 of the Law,\textsuperscript{100} price quotations, exceptions, tenders, and other forms of procurement.

[406] On the other hand, the Committee observes that the State under review did not present statistics on administrative or disciplinary penalties imposed on contractors or government officials committing the infractions contemplated in Articles 80 to 88 of the Government Procurement Law. In that regard, the Committee believes that it would be pertinent for the State under review to consider keeping such statistics, in order to identify obstacles and adopt corrective measures, as necessary. The Committee will make a recommendation. (See recommendation 1.2.3.12 in Section 1.2.3 of Chapter II of this report.)

[407] In the same vein, the Committee believes that it would be appropriate for the State under review to keep detailed, annual statistics on the outcomes of appeals for reconsideration and motions for reversal, showing how many were admitted, how many denied, how many were declared manifestly frivolous or manifestly inadmissible, and how many of those filing appeals were penalized for that reason, so as to identify challenges and take corrective measures, where necessary. The Committee will make a recommendation. (See recommendation 1.2.3.13 in Section 1.2.3 of Chapter II of this report.)

[408] Finally, the Committee notes that during the on-site visit representatives of the Office of the Director General of Government Procurement pointed out that the GUATECOMPRAS system is only authorized to track procurement processes through to the awarding of a contract, because the agency in charge of monitoring contract execution, including contracts for works, was the Office of the Comptroller of Accounts, which is also in charge of auditing procurement cases entrusted to it by the Government Procurement Law, as well as imposing penalties.

[409] In light of the above, the Committee believes that, in order to identify challenges and take corrective measures if necessary, it would be appropriate for the State under review to consider compiling statistics on the outcomes of the work of the Office of the Comptroller General of Accounts as the body responsible for overseeing the procurement processes entrusted to it under the Government Procurement Law, including the application of penalties and monitoring of procurement contract execution, so as to show many tenders it audited, how many procurement contract negotiations it checked; how many irregularities were detected and how many reported to the competent authorities; how many cases it heard and of what type; how many resulted in fines, reparation to the State or the contractor, and in what amounts; what was the cost to the

\textsuperscript{100} Nongovernmental organizations, associations, foundations, community councils, cooperatives, committees, regional and international organizations, trust funds, and any private sector or mixed, national or foreign entity that receives and/or administers public funds.
State of all those items or, in the case of reparation made to the State, how much was recovered; how many cases resulted in sanctions; in how many cases was there circumstantial evidence of criminal acts and how many were referred to the competent authority. The Committee will make a recommendation. (See recommendation 1.2.3.14 in Section 1.1.3 of Chapter II of this report.)

1.2.3. Recommendations

[410] In light of the comments made in Sections 1.2.1 and 1.2.2, the Committee suggests that the State under review consider the following recommendations:

1.2.3.1 Adopt, through the appropriate authority, pertinent measures to ensure that municipalities comply with the obligation provided for by Article 8 of the Regulations of the Law on State Contracting to publish information on their procurement activities on the Internet website of the GUATECOMPRAS System. (See paragraphs 303 to 308 in Section 1.2.1 of Chapter II of this report.)

1.2.3.2 Adopt through the appropriate authority, pertinent measures to ensure that challenges presented by users of the “GUATECOMPRAS” system receive a response within the deadline set by law. (See paragraphs 309 to 323 in Section 1.2.1 of Chapter II of this report.)

1.2.3.3 Keep detailed annual statistics showing how many complaints were addressed within the time allowed and how may were addressed after the deadline had passed, how many were not addressed at all, how many were declared inadmissible as a result of late or non-existed administrative responses by the government institution required to address them, because such information would help identify challenges and facilitate the adoption of corrective measures, where necessary. (See paragraph 324 in Section 1.2.1 of Chapter II of this report.)

1.2.3.4 Establish a second instance (appeal) body for challenging decisions taken by the Awards Board following the submission of complaints. (See paragraph 325 in Section 1.2.2 of Chapter II of this report.)

1.2.3.5 Strengthen the governing body for GUATECOMPRAS by endowing it, to the extent possible, with the human, budgetary, and technological resources needed for it to fully perform its governing body functions, operate the system, and ensure that it is sustainable. (See paragraphs 385 to 389 in Section 1.2.2 of Chapter II of this report.)

1.2.3.6 Take the necessary steps to ensure that the General Registry of Procurement is fully authorized to operate and, within available resources, is endowed with the human, budgetary, and technological resources it needs to fully perform its functions. (See paragraph 390 in Section 1.2.2 of Chapter II of this report.)

1.2.3.7 Implement appropriate coordination mechanisms between the computer systems of the Office of the Director of Government Procurement and those of the General Registry of Government Procurement in order to ensure that the information on suppliers stored in GUATECOMPRAS is maintained and can be used by the General Registry. (See paragraphs 391 to 392 in Section 1.2.2 of Chapter II of this report.)

1.2.3.8 Consider adopting provisions to establish the processes required to limit the discretionary leeway to avoid tenders or price comparisons in procurement by government dependencies or entities that Article 44.a of the current Government Procurement Law allows in respect of
situations arising out of states of emergency declared pursuant to the Public Order Law. (See paragraphs 393 to 395 in Section 1.2.2 of Chapter II of this report.)

1.2.3.9 Consider adopting specific provisions in the enabling regulations to the Government Procurement Law to regulate the conditions governing the publication and handling in GUATECOMPRAS of the negotiation of contracts and agreements entered into by entities subject to the Government Procurement Law that do not stem from procedures it establishes and to which ordinary law standards (*normas del derecho común*) apply pursuant to Article 54 of said Law. (See paragraph 396 in Section 1.2.2 of Chapter II of this report.)

1.2.3.10 Adopt such measures as are needed to promote the use of the electronic reverse auction process in the GUATECOMPRAS system. (See paragraphs 397 to 402 in Section 1.2.2 of Chapter II of this report.)

1.2.3.11 Define the terms “manifestly frivolous” and “manifestly inadmissible” in cases of appeals for reconsiderations or motions for reversal, and the conditions under which cases could be declared as such, so as to ensure that that does not become an obstacle to persons exercising their right under the Law to challenge administrative acts. (See paragraph 403 in Section 1.2.2 of Chapter II of this report.)

1.2.3.12 Compiled statistics on administrative or disciplinary penalties imposed on contractors or government officials committing the infringements contemplated in Articles 80 to 88 of the Government Procurement Law, in order to identify challenges and take corrective measures, as necessary. (See paragraphs 405 to 406 in Section 1.2.2 of Chapter II of this report.)

1.2.3.13 Keep detailed, annual statistics on the outcomes of appeals for reconsideration and motions for reversal, showing how many were admitted, how many denied, how many were declared manifestly frivolous and/or manifestly inadmissible, and how many of those filing appeals were penalized for the last-mentioned reason, so as to identify challenges and take corrective measures, where necessary. (See paragraph 407 in Section 1.2.2 of Chapter II of this report.)

1.2.3.14 Compile detailed, annual statistics on the outcomes of the work of the Office of the Comptroller General of Accounts as the body responsible for overseeing the procurement processes entrusted to it under the Government Procurement Law, including the application of penalties and monitoring of procurement contract execution, so as to show many tenders it audited, how many procurement contract negotiations it reviewed; how many irregularities were detected and how many reported to the competent authorities; how many cases it heard and of what type; how many resulted in fines, reparation to the State or the contractor, and in what amounts; what was the cost to the State of all those items or, in the case of reparation made to the State, how much was recovered; how many cases resulted in sanctions; in how many cases was there circumstantial evidence of criminal acts and how many were referred to the competent authority, so as to identify challenges and take corrective measures, where necessary. (See paragraphs 408 to 409 in Section 1.2.2 of Chapter II of this report.)

2. SYSTEMS TO PROTECT PUBLIC SERVANTS AND PRIVATE CITIZENS WHO IN GOOD FAITH REPORT ACTS OF CORRUPTION (ARTICLE III, PARAGRAPH 8 OF THE CONVENTION)

2.1. Follow-up on implementation of the recommendations formulated in the Second Round
Recommendation 2.
Strengthen systems to protect public servants and private citizens who in good faith report acts of corruption.

Measure suggested by the Committee, which requires additional attention, as envisaged in the Third Round report:

Adopt, through the appropriate authority, a comprehensive regulation on the protection of public officials and private citizens who in good faith report acts of corruption, including protecting their identities, in keeping with its Constitution and the fundamental principles of its domestic legal system, which could include, among others, the following aspects:

a) Reporting mechanisms, such as anonymous complaints and identity-protected complaints, to guarantee the personal security and identity confidentiality of public officials and private citizens who, in good faith, report acts of corruption.

b) Protection measures for those who report acts of corruption that might not be defined as criminal offenses, but which could be subject to administrative investigation.

c) Protection measures, targeting not just the protection of the physical integrity of whistleblowers and their families, but also the protection of their positions of employment, particularly for public officials and when the acts of corruption could involve their superiors or coworkers.

d) Mechanisms for reporting the threats or reprisals that informants may face, indicating the authorities responsible for processing protection requests and the agencies responsible for providing such protection.

e) Mechanisms to facilitate international cooperation in the above areas, when appropriate.

[411] Both in its response to the questionnaire and during the on-site visit, the State under review presented information and mentioned new developments in relation to the above measure. In that regard, the Committee notes the following as steps that contribute to progress in its implementation:

[412] - “The Office of the Comptroller General of Accounts has furnished several mechanisms to enable citizens to file reports on possible acts of corruption involving the use of public funds. Such reports may be filed either anonymously or with full identification of the whistleblower. 1. Center for Handling Citizens’ Reports 2. Hot-line (direct telephone call) 1506. 3. Smart phone app “I Denounce” (App) 4. Offices of the 21 Departmental Delegations.”

[413] - “Within the legal framework for protection, the Office of the Attorney General has paid special heed to cooperating witnesses (colaboradores eficaces) in cases investigating acts of corruption. The measures taken have involved training for personnel lending assistance and protection to those collaborators.”

[414] – “Strengthening the Protection Program through Adoption of Regulatory Instruments:

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101 Response of Guatemala to the questionnaire for the fifth round, pp. 58 to 60.
102 See the PowerPoint presentation by the Public Prosecutors’ Office (MP) http://www.oas.org/es/sla/dlc/mesicic/paises-rondas.html?c=Guatemala&r=5
103 Response of Guatemala to the questionnaire for the Fifth Round, p. 58.
104 Idem, p. 59.
a) Manual on the Organizational Structure and Function of the Protection Office (Decision No. 95-2013);

b) Standards and Procedures Manual (Decision No. 96-2013).”

“Management and coordination of prosecutors’ offices to ensure that victims, witnesses, or cooperating witnesses in proceedings involving acts of corruption are provided with personal security by persons unrelated to the Ministry of the Interior.”

The anti-workplace-harassment initiative implemented by the Judiciary.

The Committee takes note of the progress made by the State under review and of the need for it to continue to give attention to implementing the single measure contemplated in the above recommendation for the following reasons:

First, the Committee notes that in its response to the questionnaire the State under review mentioned the following: “As regards the Office of the Attorney General, no comment is made given that specific regulations or provisions have not been issued for handling witness in proceedings involving acts of corruption, particularly since the law already contemplates general and comprehensive provisions on actions to protect people in judicial proceedings.”

Second, the Committee observes that, in its reply, the State under review also points out that in September 2018, “a new Collective Covenant on Working Conditions was signed by the Judiciary and the Trade Union of Workers in the Judiciary, Article 98 of which states that denunciations “shall be filed expressly by the fully identified interested party and not anonymously, and the complaint shall be ratified by the complainant or any other electronic medium at the respective hearing, except when the person filing the complaint/denunciation is an official in the Judiciary. If there is no ratification, the case shall be shelved. In light of the above, the Disciplinary Unit of the Judiciary finds itself unable to implement measures or take punitive administrative steps against employees or officials in the Judiciary in cases in which complaints are filed anonymously or the complainant does not ratify the denunciations made. It is only possible to certify those complaints for the Office of the Attorney General in respect of the possible commission of illicit acts.” In that regard, during the on-site visit, the representatives of the Judiciary’s Disciplinary Unit indicated that one problem posed by the collective covenant was that it focused on protecting the privacy of the person denounced and that, in addition to lacking protective measures for whistleblowers, contemplated penalties for them.

Finally, the Committee notes that during the on-site visit, both the representatives of the Office of the Attorney General and those of the Judiciary states that current regulations do not in fact provide palliative measures for whistleblowers reporting acts of corruption and they agreed that a comprehensive protection law for those whistleblowers is still lacking.
[423] In this regard, the Committee wishes to point out that the single measure in the foregoing recommendation dates back to the analysis in the Second Round, in which the Committee made the following observation:108

[424] “The Committee also observes that the Law for Protection of Persons Involved in Proceedings and Persons Connected with the Administration of Criminal Justice and its Regulations provide protection measures for persons involved in criminal proceedings; however, protection measures are not provided for public servants or private citizens who report acts of corruption that might not be recognized as crimes but could be the subject of an administrative investigation.

[425] “The Committee notes, furthermore, that the protection measures provided in the Law for Protection of Persons Involved in Proceedings and Persons Connected with the Administration of Criminal Justice and its Regulations, are essentially designed to protect the physical integrity of their beneficiaries but not to provide whistleblower protection for public officials in the workplace, which would contribute to the achievement of the purposes of the Convention, to the extent that such measures encourage public servants to fulfill their duty to report acts of corruption without fear of a possible deterioration in their working conditions.

[426] “In addition, the Committee finds that no provision is made for mechanisms for reporting threats or reprisals that informants may face.

[427] “Based on the foregoing, the Committee will formulate a recommendation to the country under review (see the recommendation in Chapter III, Section 2 of this report), to the effect that it consider the adoption, by the appropriate authority, of a comprehensive regulation on the protection of public officials and private citizens who in good faith report acts of corruption, including protecting their identities, in keeping with its Constitution and the fundamental principles of its domestic legal system”.

[428] Based on the foregoing, the Committee takes note of the steps taken by the State under review, of the difficulties mentioned, and of the need for the State to give attention to implementing the single measure in the above recommendation, to which end, it could take into consideration the criteria established in the Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses, which is posted on the Anti-Corruption Portal of the Americas.109 The Committee also believes that it would be appropriate to re-phrase the recommendation for the sake of greater clarity. (See Recommendation 2.4.1. in Section 2.4 of Chapter II of this report.)

[429] It should also be pointed out that the civil society organization “Acción Ciudadana” stated in the parallel document presented in connection with Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC, inter alia, that:110

[430] “In 2016, the Congress of the Republic of Guatemala receive a bill prepared by Acción Ciudadana, which followed the procedure for legislative initiatives and was registered as “ INITIATIVE No. 4936, CALLING FOR THE PASSING OF A LAW TO FACILITATE AND ENCOURAGE REPORTING OF ACTS OF CORRUPTION AND TO PROTECT THEIR IDENTITIES, which has gone through three stages: 1) Presentation to the Legislative Management Office (Dirección Legislativa); 2) Presentation to Congress in Plenary Session; and 3) Opinion of the Regular Committee for Legislation and Constitutional Matters and of

109 Available at: http://www.oas.org/es/sla/dlc/mesicic/leyes.html
110 Document presented by “Acción Ciudadana” under Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC,
the Special National Committee for Transparency. This is the only step taken by the State, in this case Congress, to comply with the recommendations. No progress has been made with the initiative since October 30, 2016.”

[431] At the same time, the Committee notes that during the on-site visit the representatives of the Office of the Attorney General pointed out that one problem was that it is often requested that implementation of protection measures for whistleblowers not be left up to the police, given that sometimes the police is involved in the corruption issue. In that respect, they added that inter-agency manuals were needed to allow the Office of the Attorney General to implement those protection measures, as that was the only protection that whistleblowers could count on in such cases. Accordingly, the Committee believes that it would be appropriate for the State under review to consider establishing inter-agency coordination mechanisms, as appropriate, which could include the adoption of inter-agency manuals containing provisions for determining which agents from which institutions would be the best choice to guarantee the protection of persons reporting acts of corruption, in accordance with current regulations. To that end, the Committee will make a recommendation. (See Recommendation 2.4.2 in Section 2.4 of Chapter II of this report).

[432] The Committee further notes that during the on-site visit the representatives of the Office of the Attorney General reported that it was necessary to bolster the Protection Office established under Decree No. 70-96, “Law for the Protection of Parties to Judicial Proceedings and Persons Involved in Administering Criminal Justice,” the budget for which had been cut by half. In that regard, the Committee believes that it would be appropriate for the State under review to consider strengthening that Protection Office by endowing it, within available resources, with the human and budgetary resources needed for it to fully perform the protection functions assigned to it by the law. The Committee will make a recommendation to that effect. (See Recommendation 2.4.3 of Section 2.4 of Chapter II of this report.)

[433] Finally, as regards technical cooperation needs, the Committee notes that, in its reply, the State under review stated that: “As part of the technical cooperation provided, there is a need for counseling regarding the contradiction between protecting the whistleblower’s privacy and preventing reprisals against him or her and the right of the person denounced to know the identity of his or her accused, as an integral part of the right to self-defense.” It is worth pointing out that that is consistent with the concern voiced by the Judiciary regarding the approach taken in the Collective Covenant on Working Conditions signed by the Judiciary and the Trade Union of Workers in the Judiciary.

[434] In the same vein, the Committee also notes that, during the on-site visit, representatives of the Office of the Attorney General singled out the need for cooperation in the following areas: “Comprehensive reform and adaptation of existing rules and regulations; protocols and mechanisms for a comprehensive diagnostic assessment of candidates for protections; Implementation of a continuous and systematic personnel training program; and Analysis of how best to implement and operate the Central American Agreement.”

[435] In this respect, the Committee takes note of the needs described in the reply to the questionnaire and by the Office of the Attorney General and the Judiciary during the on-site visit regarding the need for the State under review to provide it with the necessary support and to invite other states parties and cooperation entities to assist those institutions in these areas. The Committee will make a recommendation. (See recommendation 2.4.4 in Section 2.4 of Chapter II of this report.)

2.2 New developments with respect to the Convention provision on systems for protecting public servants and private citizens who in good faith report acts of corruption

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111 Response of Guatemala to the questionnaire for the Fifth Round, p. 60.
112 See the PowerPoint presentation by the Public Prosecutors’ Office (MP) http://www.oas.org/es/sla/dlc/mesicic/paises-rondas.html?c=Guatemala&r=5
2.2.1 Developments in the regulatory framework

[436] – Collective Covenant on Working Conditions signed by the Judiciary and the Trade Union of Workers in the Judiciary.113

[437] – Manual on the Organizational Structure and Function of the Protection Office (Decision No. 95-2013)

[438] – Standards and Procedures Manual (Decision No. 96-2013)

[439] – Security protocol on threats, intimidation or any other behavior posing a security threat or danger, especially to magistrates or judges.

2.2.2 New developments with regard to technology

[440] – The installation of an electronic link in the Internet Portal of the Judiciary for filing denunciations and complaints.114

2.3 Results

[441] During the on-site visit, the State under review provided Protection Office statistics, extracted from the archives of that Office’s Evaluation and Analysis Section, on witnesses protected after reporting acts of corruption.

Chart No. 1

<table>
<thead>
<tr>
<th>Case No.</th>
<th>Requesting Attorney General’s Office</th>
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</tr>
</thead>
<tbody>
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<td>001-2017</td>
<td>Attorney General’s Office in the Anti-Corruption Section</td>
<td>Forgery and Abuse of Authority</td>
</tr>
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</tr>
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</tbody>
</table>

[442] Regarding the above chart, the Committee notes that, although it shows the number of cases of witnesses protected for having reported acts of corruption that are being investigated in the Protection Office, only data for 2017 are provided. Furthermore, this chart does not indicate how many whistle blowers requested protection measures; how many such requests for protection were accepted and what type of protection was provided; how many were denied protection; how many requests for protection were not resolved for whatever reason; how long the protection measures lasted and how effective they were; how many Protection Service benefits were terminated because the period for which they were granted had ended; how many were terminated because the risks that had prompted them no longer existed; how many were terminated because of a failure by the beneficiary to comply with the conditions or obligations established in the agreement signed with the Director of the Office; or how many penalties were imposed.

113 Response of Guatemala to the questionnaire for the Fifth Round, p. 60.
114 Available at: https://sharepointprod.oj.gob.gt/FrmExt/Lists/Denuncia/Item/newifs.aspx?List=1874e5d8-ddbd-431d-b684-1b3a2a4e0be0&RootFolder=&Web=f9f8ed25-fd89-4853-a2b7-716cd1d099dc
on private individuals, government officials, and employees possessing information relating to the protection provided by the Service because they violated their obligation to keep it secret so as not to compromise the security of the beneficiaries, and the nature of those penalties: all of which would data would serve to identify challenge and adopt corrective measures. The Committee believes that it would be appropriate for the State under review to consider keeping such statistics and it will make a recommendation to that effect. (See recommendation 2.4.5 in Section 2.4 of Chapter II of this report.)

2.4 Recommendations

[443] In light of the comments made in Sections 2.1, 2.2, and 2.3, the Committee suggests that the State under review consider the following recommendations:

2.4.1 To adopt, through the corresponding authority, a comprehensive regulation to protect public servants and private citizens who, in good faith, report acts of corruption, including protection of their identity, in accordance with the Constitution and the basic principles of their national legislation, which could consider the criteria established in the Model Law to facilitate and encourage the reporting of acts of corruption and to protect whistleblowers and witnesses available on the Anti-Corruption Portal of the Americas, which could include the following elements, among others: (See paragraphs 420 to 430 in Section 2.1 of Chapter II of this report.)

a) Reporting mechanisms, such as anonymous complaints and identity-protected complaints, to guarantee the personal security and identity confidentiality of public officials and private citizens who, in good faith, report acts of corruption.

b) Protection measures for those who report acts of corruption that might not be defined as criminal offenses, but which could be subject to administrative investigation.

c) Protection measures, targeting not just the protection of the physical integrity of whistleblowers and their families, but also the protection of their positions of employment, particularly for public officials and when the acts of corruption could involve their superiors or coworkers.

d) Mechanisms for reporting the threats or reprisals that informants may face, indicating the authorities responsible for processing protection requests and the agencies responsible for providing such protection.

e) Mechanisms to facilitate international cooperation in the above areas, when appropriate.

2.4.2 Establish inter-agency coordination mechanisms, as appropriate, which could include the adoption of inter-agency manuals containing provisions for determining which agents from which institutions would be the best choice to guarantee the protection of persons reporting acts of corruption, in accordance with current regulations. (See paragraph 431 in Section 2.1 of Chapter II of this report.)

2.4.3 Strengthen the Protection Office by providing it, within available resources, with the human and budgetary resources needed for it to fully perform the functions assigned to it by the Law for the Protection of Parties to Judicial Proceedings and Persons Involved in Administering Criminal Justice. (See paragraph 432 in Section 2.1 of Chapter II of this report.)
2.4.4 Undertake whatever steps are needed with other States and cooperation agencies to provide the Office of the Attorney General and the Judiciary with the technical assistance required to finance counseling regarding the relation between protecting the whistleblower’s privacy and preventing reprisals against him or her and the right of the person denounced to know the identity of his or her accused, as an integral part of the right to self-defense; as well as comprehensive reform and adaptation of existing rules and regulations to protect whistleblowers reporting acts of corruption; the development of protocols and mechanisms for a comprehensive diagnostic assessment of candidates for protection; implementation of a continuous and systematic personnel training program; and analysis of how best to implement and operate the Central American Agreement. (See paragraphs 433 to 435 in Section 2.1 of Chapter II of this report.)

2.4.5 Keep annual statistics on the process for protecting victims and witnesses in connection with the Law for the Protection of Parties to Judicial Proceedings and Persons Involved in Administering Criminal Justice, showing how many requests for protection measures were filed and how many were accepted; what type of protection was provided; how many were denied protection; how many requests for protection were not resolved for whatever reason; how long the protection measures lasted and how effective they were; how many Protection Service benefits were terminated because the period for which they were granted had ended; how many were terminated because the risks that had prompted them no longer existed; how many were terminated because of a failure by the beneficiary to comply with the conditions or obligations established in the agreement signed with the Director of the Office; how many penalties were imposed on private individuals, government officials, and employees possessing information relating to the protection provided by the Service because they violated their obligation to keep it secret so as not to compromise the security of the beneficiaries, and the nature of those penalties; in order to serve to identify challenges and adopt corrective measures. (See paragraphs 441 to 442 in Section 2.3 of Chapter II of this report.)

3. ACTS OF CORRUPTION (ARTICLE VI (1) OF THE CONVENTION)

3.1. Follow-up on implementation of the recommendations formulated in the Second Round

Recommendation 3.1 suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

Modify the following articles of the Criminal Code as follows:

Measure a) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

Article 439 of the Criminal Code (as amended by Article 118 of Decree 11-2006 of the Congress of the Republic), which classifies solicitation or acceptance of bribes and relates to paragraph Article VI(1)(a) of the Convention, could be modified to include “persons who exercise public functions” as perpetrators of the offense, in addition to the “public servants or employees” provided by that article.

[444] Both in its reply to the questionnaire and during the on-site visit, the State under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as a step that contributes to its satisfactory implementation:

[445] The amendment to Article 439 of the Criminal Code on acceptance or solicitation of bribes (cohecho pasivo), the revised text of which establishes that: “Any government official or public servant or
anyone performing public functions who, directly or indirectly, solicits or accepts any object of pecuniary value or other benefit, as a favor, gift, present, promise, advantage or for any other reason for himself or for another person, in return for performing, ordering, delaying, or omitting an act proper to the position he holds shall be guilty of the offense of accepting or soliciting bribes...”

[446] Here, the Committee notes that the offense now includes “anyone performing public functions,” and therefore deems that satisfactory consideration has been given to measure a) of the above recommendation.

Measure b) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:
Article 442 of the Criminal Code (as amended by Article 119 of Decree 11-2006 of the Congress of the Republic), which classifies offering of bribes and relates to paragraph Article VI(1)(b) of the Convention, could be modified to include “persons who exercise public functions” as recipients of benefits offered or given, in addition to the “public servants or employees” provided by that article.

[447] Both in its reply to the questionnaire and during the on-site visit, the State under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as a step that contributes to its satisfactory implementation:

[448] The amendment to Article 442 of the Criminal Code on offering of bribes (cohecho activo), the revised text of which establishes that: “Any person who, directly or indirectly, offers, or delivers to, a government official or public servant or anyone performing public functions any object of pecuniary value or other benefit, as a favor, gift, present, promise, advantage or for any other reason for himself or for another person, in return for performing, ordering, delaying, or omitting an act proper to the position he holds shall be guilty of the offense of offering bribes.”

[449] Here, the Committee notes that the offense now includes “anyone performing public functions,” and therefore deems that satisfactory consideration has been given to measure b) of the above recommendation.

Measure c) suggested by the Committee, which requires additional attention, as envisaged in the Third Round report:
Articles 419, 449 and 451 of the Criminal Code, which criminalize, respectively, Breach of Duty, Extortion, and Illegal Exaction and relate to Article VI(1)(c) of the Convention, could be modified to include “persons who exercise public functions” as perpetrators of the offense, in addition to the “public servants or employees” provided by that article.

[450] Both in its reply to the questionnaire and during the on-site visit, the State under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as a step that contributes to its satisfactory implementation:

[451] – The amendment of Article 1 corresponding to General Provisions of the Criminal Code, which provides as follows:115

[452] “For criminal law purposes, the following definitions shall apply:

[453] “Government official/public servant (funcionario público): anyone holding a position in the legislative, executive, or judicial branches of government, be he/she appointed or elected, permanent or

115 Available at: https://www.oas.org/juridico/pdfs/mesicic4_gtm_corrup.pdf
temporary, remunerated or honorary, regardless of how long that person has held the position; ii) anyone else performing a public function, including for a government agency or State-owned enterprise, or who provides a public service.

[454] Foreign government official (funcionario público extranjero): anyone holding a position in the legislative, executive, or judicial branches of government of a foreign country, be he/she appointed or elected; and anyone performing a public function for a foreign country, including for a government agency or State-owned enterprise.

[455] Official of a public international organization (funcionario de una organización internacional pública): an employee of an international public organization or anyone authorized to act on behalf of such an organization.

[456] The Committee further notes that, in both its reply to the questionnaire and the on-site visit, the State under review reported that, in practice, in a judgment handed down on March 19, 2017 (trial 3008-2013), in an appeal against a judgment involving the offense of Breach of Duty, Extortion, and Illegal Exaction filed by a person in a different type of labor relation with the State, the Constitutionality Court ruled as follows: "...it transpires from a reading of the resolution transcribed above that there is no indication that constitutional principles or rights were violated because the (now) appellant was convicted and sentenced on the basis of a norm in force when the act he was charged with was committed. In addition, the appellant could have been charged with the offense of breach of duties regulated in Article 419 of the Criminal Code, because, irrespective of the type of relation he had with the State, he was performing a public function (...) and was subject to all the obligations and responsibility that that entails, including being tried and convicted for the aforementioned offense..."

[457] In that regard, the Committee wishes to issue a reminder that the definitions of “Public Function” and “Government Official/Public Servant” envisaged in the Convention are as follows:

[458] “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.

[459] “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.

[460] In view of the fact that the State under review has incorporated into its Criminal Code a definition of Government Official/Public Servant that reflects the elements contemplated in the Convention to be applied for criminal law purposes to all conduct contemplated in those regulations, including that of anyone performing a public function, the Committee considers that satisfactory consideration has been given to measure c) of the above recommendation.

Recommendation 3.2 suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:
Expand the criminal provisions set out in Articles 2, 3, and 4 of the Law Against Organized Crime, which address conspiracy and criminal association and are related to the paragraph (e) of Article VI.1 of the Convention, by extending them to cover all the conduct identified in that article of the Convention.

[461] In its response, the State under review presented information that it considers relevant to implementation of the above recommendation. Notably, it stated that:
“Based on the aforementioned provisions of the Criminal Code, the recommendations based on the Convention regarding persons performing public functions, are deemed to have been assimilated. Accordingly, it will be up to judges and magistrates to apply the provision in concrete cases involving accusations of abuse of authority, extortion, and illegal exaction.”

In light of the above, the Committee notes the need for the State under review to pay additional attention to implementing the above recommendation, particularly since there is no reference to the inclusion of persons performing public functions and there has been to amendment of the Law against Organized Crime to supplement the criminal provisions contained in Articles 2, 3, and 4 thereof regarding conspiracy to commit crime and illicit associations, which related to Article VI.1.e of the Convention, extending them to cover all the offenses referred to in this article of the Convention. (See Recommendation 3.2.1 in Section 3.2 of Chapter II of this report.)

It should also be pointed out that the civil society organization “Acción Ciudadana” stated in the parallel document presented in connection with Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC (hereinafter “the parallel document”), inter alia, that:

“Article 17 of the Criminal Code broadly regulates the offenses defined in Article VI.1.e of the Convention, indicating that “Conspiracy exists when two or more people make arrangements among themselves to commit a crime and resolve to carry it out.” A proposition exists when a person who has decided to commit a crime invites another person or persons to carry it out. Conspiracy, proposition, provocation, instigation, and inducement to commit a crime shall only be punishable in cases expressly provided for in the law. That being so, the concrete measure that needs to be taken is to amend the Law against Organized Crime so as to broaden the scope of the aforementioned articles to include the provisions of the Convention on this matter. As established in the foregoing section, that change has not yet been implemented.”

3.2. Recommendations

In light of the comments made in Section 3.1 of Chapter II of this report, the Committee suggests that the State under review consider the following recommendation:

3.2.1. Expand the criminal provisions set out in Articles 2, 3, and 4 of the Law Against Organized Crime, which address conspiracy and criminal association and are related to the paragraph (e) of Article VI.1 of the Convention, by extending them to cover all the conduct identified in that article of the Convention. (See paragraphs 461 to 465 in Section 3.1 of Chapter II of this report.)

4. GENERAL RECOMMENDATIONS

Recommendation 4.1 suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round: Design and implement, when appropriate, training programs for public servants responsible for implementing the systems, standards, measures and mechanisms considered in this Report, for the purpose of guaranteeing that they are adequately understood, managed and implemented.

Bearing in mind that sections 1, 2, and 3 of Chapter II of this report contain an up-to-date, detailed analysis both of the follow-up on the recommendations made to the Republic of Guatemala in the Second Round and of the systems, standards, measures, and mechanisms to which the above recommendation...
refers, the Committee, reaffirms the contents of those sections and, therefore, considers that this recommendation is redundant.

Recommendation 4.2 suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

*Select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze the results of the systems, standards, measures and mechanisms considered in this Report, and to verify follow-up on the recommendations made herein.*

[468] Bearing in mind that sections 1, 2, and 3 of Chapter II of this report contain an up-to-date, detailed analysis both of the follow-up on the recommendations made to the Republic of Guatemala in the Second Round and of the systems, standards, measures, and mechanisms to which the above recommendation refers, the Committee, reaffirms the contents of those sections and, therefore, considers that this recommendation is redundant.

III. REVIEW, CONCLUSIONS AND RECOMMENDATIONS ON IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE FIFTH ROUND

1. INSTRUCTIONS TO GOVERNMENT PERSONNEL TO ENSURE PROPER UNDERSTANDING OF THEIR RESPONSIBILITIES AND THE ETHICAL RULES GOVERNING THEIR ACTIVITIES (ARTICLE III, PARAGRAPH 3 OF THE CONVENTION)

[469] In keeping with the Methodology agreed upon by the Committee for its analysis of the provision selected for the Fifth Round, which is contained in Article III (3) of the Convention and concerns measures to create, maintain, and strengthen “instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities,” the State under review chose the National Civil Service Office (ONSEC), the Judiciary, and the Legislative branch, as it considered that they stand out for having implemented programs relating to this matter.

[470] Following is a brief description of the three public-sector entities selected by the Republic of Guatemala that will be analyzed in this section.

[471] – The National Civil Service Office (ONSEC) is responsible for technical management of the human resources system in public administration, with a view to guaranteeing appropriate and effective performance of the government’s institutional tasks. The aforementioned Office operates within the legal framework established by the Political Constitution of the Republic of Guatemala, the Civil Service Law, and the Civil Service Pensioners Law (*Ley de Clases Pasivas Civiles del Estado*) and its Enabling Regulations and supplementary provisions, which state that its function is to regulate relation between the public administration and all those who work for it: a reference to all the administrative bodies that depend on the executive branch and its decentralized and autonomous entities governed by those regulations. Its functions also include everything to do with administration of the various pensions awarded to former public servants and beneficiaries of the Government Pension Scheme.

[472] – The legislative branch issues the regulations of public interest for decrees relating to public administration that affect the system for managing public servants and the establishment of regulations to encourage integrity in public office.

[473] – The Judiciary is responsible for administering the Justice Sector, including its civil service.

1.1. Existence of provisions in the legal framework and/or other measures.
The Republic of Guatemala has a set of provisions and/or measures on instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, including, in particular:

- With respect to the provisions and measures that apply to Executive Branch personnel, the Committee notes the following:

  [475] – Political Constitution of the Republic of Guatemala, Article 107 of which provides that “Government workers shall serve the public administration and never any political party, group, organization, or person.”


  [477] – Manuals on the Organizational Structure and Functions of institutions in the Executive Branch, which include, inter alia, job descriptions detailing the duties and responsibilities attached to each within the framework of each institution.

  [478] – Ethical Standards of the Executive Branch, Governmental Decision No. 197-2004 of the President of the Republic, Article 1 of which provides that “The present ethical standards shall be observed by all officials, employees, and advisors of the Executive Branch, without prejudice to the provisions of other regulations.”

  [479] – Organic In-house Rules of Procedure of the National Civil Service Office (ONSEC), Governmental Decision No. 246-2017, Article 2 of which provides that ONSEC “is the governing body of the Public Administration Human Resources Management System and the body that administers the Civil Service Pension System nationwide, pursuant to the Political Constitution of the Republic of Guatemala, the Civil Service Law, the Civil Service Pensions Law, and their respective enabling regulations.”

  [480] Article 3.7 provides that one of ONSEC’s functions is to “Administer the human resource management processes related to planning, creation of positions, remunerations, recruitment, selection, induction, training, performance evaluation, hygiene, and workplace safety, as well as coordinating actions needed to establish the administrative career service and professional advancement of public servants.”

  [481] – The Organic Law of the National Institute of Public Administration (INAP), Article 5 of which provides that “INAP is the technical body within the Public Administration that is responsible for generating and ensuring the implementation of an ongoing process of administrative development aimed at bolstering the capacity of government institutions and dependencies to be efficient and effective in their respective areas and in producing goods and services for the public sector and society as a whole.”

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117 Article 3 of the Ethical Standards of the Executive Branch contains the following definitions: “A) Public Servant: Government officials, employees, and advisors in general who work in and for the Executive Branch, which is staffed in accordance with the Political Constitution of the Republic of Guatemala and the Law governing the Executive Branch. B) Government Official: Whoever by law, election by the people, or legitimate appointment holds or exercises an official position, authority, role, jurisdiction, or representation in the Executive Branch. C) Government Employee: Whoever, without possessing legal powers in his or her own right, performs what he or she is ordered or mandated to do, or who, in that subordinate role, performs public duties or functions in the Executive Branch. D) Advisor: Whoever, under a contract, renders a particular service based on his or her knowledge and experience in a given technical or professional field in the Executive Branch.”
Article 6.6 provides that one of INAP’s functions is to “Define policies and take steps to ensure the ongoing development of human resources in the public sector, particularly as regards their capacity-building and training.”

As to the way in which personnel are informed of their responsibilities or functions (orally or in writing, and whether any records of that process are kept), in its response, the State under review provided information, of which the Committee highlights the following:

“During induction courses, personnel are informed of the responsibilities attached to their position, institutional values are stressed, and information is provided regarding the institutional manuals available. Attention is drawn to the legal bases for public administration and to the various administrative instruments concerning the functions performed by personnel.”

“The National Civil Service Office reports that immediate supervisors inform personnel, orally and in writing, regarding their responsibilities and functions when the latter take up their positions, and place that on record in the Department and/or Directorate in which the public servant will perform his or her functions.

As for the occasions when personnel are informed of their official responsibilities and duties, in its response, the State under review reported that generally they are informed of their responsibilities upon taking up their position.

As regards the existence of programs and induction or instruction courses for personnel on how to perform their responsibilities or functions honorably and, particularly, for making them aware of the risks of corruption inherent in the performance of said functions, the State under review reports in its reply that personnel can turn to their immediate supervisor or to the human resources department for information or to dispel doubts about how to perform their responsibilities or functions properly; if necessary, they can also turn to the Directorate of Legal Affairs in the National Civil Service Office.

As regards the use of modern communication technologies to apprise personnel of their responsibilities or functions and to provide guidance on how to perform them honorably, the State under review pointed out in its reply that public institutions have e-mail and web portals posting information on transparency and access to information, as well as specific information of interest to each administrative body. It adds that public institution portals also post ethical standards and the information regarding public service contained in the Collective Covenants on Working Conditions.

Concerning the existence of bodies to which personnel can turn for information or to dispel doubts about how to perform their responsibilities and functions properly, the State under review reported in its reply that generally they turn to their immediate supervisor or to Human Resources directorates or departments.

As regards the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed about their responsibilities and functions, and for seeing that this task is fully carried out, and the measures or steps such bodies can adopt to enforce the norms and/or measures in force in this regard, in its response, the State

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118 Response of Guatemala to the questionnaire for the Fifth Round, p. 7.
119 Idem., pp. 7 and 8.
120 Idem., p. 8.
121 Idem., p. 9.
122 Idem.
under review said that the organ responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed about their responsibilities and functions and for seeing that this task is fully carried out is the National Civil Service Office (ONSEC).  

[491] In relation to the way in which personnel are informed of the ethical rules governing their activities, indicating whether this is done orally or in writing and whether records are kept of those instructions, in its response to the questionnaire, the State under review said that “the National Institute of Public Administration provides training courses open to public servants in the Executive Branch on: “Public administration: thought and action,” Chapter 6 of which has a module on “Ethics and values of the public servant.” This course forms part of the National System for Certifying the Knowledge possessed by Public Servants in the Executive Branch.

[492] “The course entitled ‘What I should know as a public servant’ also addresses the ethic module and is for all public servants. Thought could be given to making it mandatory for all new entrants into the public administration (Academic agendas of the INAP, 2017 and 2018, and the 2017 and 2018 Annual Reports).”

[493] Regarding the existence of programs, induction courses, training, and instructions to personnel about the ethical rules governing their activities and about the consequences of failure to abide by them for the civil service and for the wrongdoers, the State under review states in its response that the induction, training, and instructional courses available include the Preparatory Knowledge Certification Course “Public Administration: Thought and Action” and the course entitled “What I should know as a Civil Servant”. Academic agendas of the INAP, 2017 and 2018.

[494] With respect to the use of modern communication technologies to apprise personnel of the ethical rules governing their activities and to provide guidance as to their scope or interpretation, the State under review reported in its response that “Use of the National Institute of Public Administration platform and portal constantly induces personnel to register for training courses with an ethics and public integrity component.”

[495] Regarding the existence of bodies to which personnel can resort to obtain information or dispel doubts about the scope or right way to interpret the ethical rules governing their activities, the State under review points out in its response that personnel can turn to the various Access to Public Information Units (UIP) located in each government institution or other body required by law to have one or else to the directorates or departments of human resources and legal counseling in each administrative entity.

[496] Finally, regarding the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of the ethical rules that govern their activities, and for seeing that this task is fully carried out, and the steps such bodies can take to enforce the norms and/or measures in force in this regard, in its reply, the State under review said that the bodies responsible are the Office of the Comptroller General of Accounts, the internal audit directorates, the department of legal affairs, and the human resources directorates.

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123 Idem.
124 Idem. p. 10.
125 Idem.
126 Idem. p. 11.
127 Idem.
128 Idem.
Statutory provisions of a diverse juridical nature applicable to legislative branch personnel, including, in particular:


[498] – The Civil Service of the Legislative Branch Law, Title III, Chapter I, Article 31 of which establishes, as part of the legal framework, the institutional obligation to create the Civil Service System of the Legislative Branch and the administrative career service for personnel comprising the human sources roster of the institution, in order to ensure the existence of efficient, professional staff at the service of the Legislative Branch.\textsuperscript{129}

[499] – Enabling regulations of the Legislative Civil Service Law.

[500] Here, the Committee notes that, in its reply, the State under review did not provide information on instructions to legislative branch personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities. At the same time, the Committee also notes that during the on-site visit representatives of Congress did provide the following information:\textsuperscript{130}

[501] The Legislature has a Human Resources Directorate with a Capacity-building and Training Department responsible for programming and implementing the “annual training plan, approved by the Governing Board, designed to ensure that the staff in the various areas of the Legislative Branch are always well trained.” Furthermore, Congress has entered into agreements to that end with institutional cooperation entities.

[502] With respect to the moments at which personnel are informed of their responsibilities and functions, whether this is done when they begin performing them or at a later point, when their functions are modified, or when those functions change because of a change of position, during the on-site visit representatives of Congress presented the 2019 Annual Training Work Plan,\textsuperscript{131} which envisages the following:

[503] “I. Cyclical courses:

[504] 1. a. Induction courses: For newly appointed personnel, officials, deputies and advisors, and student interns. To be held whenever needed, depending on the entry of new personnel and the dynamic of the Institution’s operating cycles. The courses should be offered before new staff take up their posts..

[505] 1.a.1 Induction for new workers, to be organized according to personnel entry and rotation requirements. At least every two months.

[506] 1.a.2. Induction for new lawmakers and advisors: to be imparted to deputies and their advisors at the state of each new legislature.

[507] 1.a.3. Induction for student interns: to be imparted at the start of each new internship cycle.

\textsuperscript{129} See the PowerPoint presentation by Congress \url{http://www.oas.org/es/sla/dlc/mesicic/paises-rondas.html?c=Guatemala&r=5}
\textsuperscript{130} Response of Guatemala to the questionnaire for the Fifth Round, p. 11.
\textsuperscript{131} 2019 Annual Training Work Plan, Congress of the Republic of Guatemala \url{http://www.oas.org/es/sla/dlc/mesicic/paises-rondas.html?c=Guatemala&r=5}
2. Staggered courses: e.g., for skills-upgrading processes; in administrative or computer skills, for instance. These courses need to be taken in a certain order of increasing complexity, whereby the earlier courses are a prerequisite for the later ones.

3. Permanent and ongoing courses: e.g., refresher courses for legal updates or for processes and procedures resulting from amendments or changes to laws or other factors.

4. Face-to-face courses: using traditional face-to-face training methods and knowledge-sharing.
   - Statutory provisions of a diverse juridical nature applicable to judicial branch personnel, including, in particular:

- The Civil Service Law of the Judiciary, Article 16.f of which establishes that passing the induction course (to be designed) is one of the requirements for entering the judiciary as a judicial auxiliary, or administrative or technical worker.
- The enabling regulations to the Civil Service Law of the Judiciary, Article 35 of which provides that: “The induction program for new personnel shall contain three modules: General Induction, Induction into the area, and Induction into the specific position. The first shall cover, in a specific document, at least the following: institutional mission and vision; organizational structure; specific policies, regulations, and rules of procedure, services to be rendered and other relevant aspects. This part shall be constantly evaluated and developed by the Human Resources System for the Judiciary. The second module shall cover the dependency or work unit and the third a description of its functions and responsibilities. The second and third modules and their evaluation shall be entrusted to the administrative unit in which the employee is serving; for judges and magistrates, that unit shall be the Institutional Training Unit.”

- Rules governing Ethical Behavior in the Judiciary, Supreme Court Decision No. 22-2013.
- Supreme Court Decision No. 49-2013 d creating the Institutional Integrity System of the Judiciary (SIIOJ).
- Enabling Regulations of the System of Consequences of the Institutional Integrity System of the Judiciary, Supreme Court Decision No. 22-2014.

Regarding the existence of programs and induction or instruction courses for personnel on how to perform their responsibilities or functions honorably and, particularly, for making them aware of the risks of corruption inherent in the performance of said functions, the State under review reported in its response that Article 35 of the enabling regulations to the Civil Service Law of the Judiciary refers to the induction program and that the Department of Skills-Building and Training of the Judiciary’s Human Resources Directorate includes the programming of induction courses for new personnel in the Annual Training Plan (PAC) and the Annual Work Plan (POA). Those courses familiarize participants with the institution and the laws governing staff relations. Other courses address the issues of honesty, transparency, ethics, principles and values as they affect personnel. In addition, during the on-site visit, representatives of the Judiciary pointed out that there are courses taught by the Judicial Studies School, which is the Judiciary’s institutional training unit.

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132 Response of Guatemala to the questionnaire for the Fifth Round, p. 8.
133 See the portal of the Judicial Studies School of the Republic of Guatemala http://ww2.oj.gob.gt/uci/index.php?option=com_content&view=article&id=132&Itemid=187
As regards the use of modern communication technologies to apprise personnel of their responsibilities or functions and to provide guidance on how to perform them honorably, in its response the State under review said that the Ethical Behavior Rules were periodically reinforced via the intranet.\textsuperscript{134}

With respect to the occasions on which personnel are informed of ethical rules governing their activities, that is, whether this is done when they begin performing them or at a later point; when a change in their functions entails a different set of applicable ethical rules; or when changes are made to those rules, the State under review mentioned in its response to the questionnaire that the occasion on which personnel and prosecutors are informed of ethical rules is when they begin to perform their duties, during the General Induction Course, and that likewise the Institutional Integrity System takes it upon itself, through the Social Communication area, to periodically reinforce the Ethical Behavior Rules via the intranet.\textsuperscript{135} In addition, during the on-site visit, representatives of the Judiciary pointed out that those courses are taught to personnel working in the courts and to administrative personnel by the Training Unit, while it is the Judicial Council that provides training to judges and magistrates.

As to the existence of induction, training, or instruction programs and courses for personnel on the ethical rules that govern their activities and, in particular, on the consequences of their infringement for the civil service and for violators, in its response, the State under review said that the General Induction program for new entrants into the judiciary served that purpose. The State added that at one point in the aforementioned course mention is made of the Ethical Behavior Rules of the Judiciary and participants are warned that failure to abide by them constituted misconduct and would be punished accordingly.\textsuperscript{136}

1.2. Adequacy of the legal framework and/or other measures

Based on its examination of the constitutional, legal and other provisions on measures for providing instruction to government personnel in the three public-sector entities/branches selected by the State under review in order to ensure proper understanding of their responsibilities and the ethical rules governing their activities, the Committee finds that they are relevant for the purposes of the Convention.

However, the Committee believes it timely to make a number of observations in relation thereto:

- With respect to the provisions and measures that apply to Executive Branch personnel, the Committee notes the following:

First, the Committee notes that, in its response, the State under review pointed out that, through induction courses, personnel are informed of the responsibilities attached to their position, institutional values are reinforced, and institutional manuals are presented. Attention is drawn to the legal bases for public administration and to the various administrative instruments concerning the functions performed by personnel. Nevertheless, the Committee also notes that during the on-site visit representatives of ONSEC reported that those induction courses were only envisaged for personnel performing permanent (category 011) tasks, but not for other personnel in public administration performing public functions for the State under other categories or types of contract. They added that no induction or other training courses are mandatory for personnel hired under other categories.

\textsuperscript{134} Idem., p. 10.
\textsuperscript{135} Idem.
\textsuperscript{136} Idem.
In the same vein, the Committee notes that, although INAP offers training courses open to executive branch personnel, dealing with public servant ethics and values, those courses are only directed at personnel performing permanent functions and there is no obligation to include personnel hired under other contracts.

In that connection, the Committee believes that it would be beneficial for the State under review to take the steps it considers appropriate so that all public administration personnel, irrespective of the nature of their engagement, are incorporated in induction, re-induction, and continuous training programs, as appropriate, including those relating to ethics and awareness of corruption risks. The Committee will make a recommendation. (See recommendation 1.4.1 in Section 1.4 of Chapter III of this report.)

Second, the Committee notes that during the on-site visit, ONSEC representatives pointed out that they do not have a general training program on public servants’ ethics and duties, although they do have a program offering training on human resource matters specifically for the heads or temporary heads of human resource departments. They further mentioned that each ministry is in charge of its own training courses on public servants’ duties and on ethical standards, and that they do not depend on ONSEC. For that reason, too, there were no statistics on the subject.

Without prejudice to the agreements that ONSEC enters into with such institutions as INAP, the Presidential Commission on Transparency and Modernization of the State, and the Office of the Comptroller General of Accounts in order to offer training to institutions in the public administration, and bearing in mind that ONSEC is the governing body for the public administration’s Human Resources Management System (whose functions include administering human resource management processes related to the training of public administration personnel and coordinating actions for the professional advancement of public servants), the Committee believes that it would be appropriate for the State under review to consider developing a policy of induction and ongoing training on the duties of public servants and ethical standards governing the activities of public administration personnel in the institutions its is responsible for and to take such steps as are needed to ensure that said policy is fully implemented in all of them. The Committee will make a recommendation. (See recommendation 1.4.2 in Section 1.4 of Chapter III of this report.)

Along similar lines, the Committee believes that it would be appropriate for the State under review to consider endowing ONSEC, within available resources, with the human and budgetary resources required for it to be in a position to fully perform its function as the governing body for institutions in public administration with respect to all matters relating to induction, training, and the professional advancements of public servants. The Committee will make a recommendation. (See recommendation 1.4.3 in Section 1.4 of Chapter III of this report.)

With respect to the provisions and measures that apply to Legislative Branch personnel, the Committee notes the following:

First, the Committee observes that the legal and other provisions in the legislative branch addressing the issue of the ethical behavior of Congressional personnel in the performance of their functions do not include a specific code or manual of ethical behavior for legislative branch personnel. In that regard, the Committee believes that it would be appropriate for the State under review to consider adopting such an instrument and that, once it has done so, to conduct training programs specifically focusing on compliance with that code of ethics or manual and to appoint authorities responsible for overseeing their implementation and for carrying out training programs in that area. To that end, the Committee will make a recommendation. (See recommendation 1.4.4 in Section 1.4 of Chapter III of this report.)

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137 Articles 2 and 3(7) of the Organic In-house Rules of Procedure of the National Civil Service Office (ONSEC).
Second, as regards training programs to familiarize personnel with the responsibilities attached to their position, the Committee notes that during the on-site visit, Congressional representatives pointed out that those programs were not mandatory for all legislative branch personnel (for instance, for temporary staff or category 029 personnel, who are invited, but not obliged, to participate).

In that connection, the Committee believes that it would be beneficial for the State under review to take the steps it considers appropriate so that all legislative branch personnel, irrespective of the nature of their engagement, are incorporated in induction, re-induction, and continuous training programs, as appropriate, including those relating to ethics and awareness of corruption risks. The Committee will make a recommendation. (See recommendation 1.4.5 in Section 1.4 of Chapter III of this report.)

Third, the Committee notes that the State under review did not provide information on the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of the ethical rules governing their activities, and for seeing that this task is fully carried out, and the measures or steps such bodies can adopt to enforce the norms and/or measures in force in this regard, and that, while agreements have been entered into with the Office of the Comptroller General of Accounts, those function re not specifically contemplated within the sphere of competence, objectives, and powers conferred on it by its Organic Law.

In light of the above, the Committee believes that it would be appropriate for the State under review to consider establishing a body of that kind or attaching it to an already existing entity, while ensuring that it has, within available resources, the human and budgetary resources needed for it to fully comply with that function. The Committee will make a recommendation. (See recommendation 1.4.6 in Section 1.4 of Chapter III of this report.)

Fourth, the Committee notes that during the on-site visit the representatives of Congress said that one of the difficulties they faced with regard to training had to do with updating their currently obsolete I.T. program. The also said that they lacked suitable facilities/installations for conducting those training courses.

Here, the Committee believes that it would be appropriate for the State under review to consider strengthening the legislative branch by providing it with the budgetary and technological resources, and installations, it needs to fully meet its responsibility to instruct its personnel and provide them with an adequate grasp of their responsibilities and of the ethical standards governing their activities. The Committee will make a recommendation. (See recommendation 1.4.7 in Section 1.4 of Chapter III of this report.)

Fifth, the Committee notes the following observation contained in the 2019 Master Plan for Training for the Congress of the Republic: “Given the current structure of the Guatemalan Congress, in which functional positions and those on the payroll are not standardized, it is impossible to design a specific position-based plan of the kind that would normally be required. Nor has it been possible to conduct individual job profile analysis, to determine individual needs.”

In this regard, the Committee believes that it would be appropriate for the State under review to consider taking pertinent steps to standardize functional positions and those on the roster of Congressional

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personnel, in order to be able to conduct job profile analysis and better appraise personnel training needs. The Committee will make a recommendation. (See recommendation 1.4.8 in Section 1.4 of Chapter III of this report.)

- With respect to the provisions and measures that apply to Judiciary personnel, the Committee notes the following:

[538] First, the Committee notes that the Civil Service Law of the Judiciary makes passing an induction program a prerequisite, but that only applies to entering the career as a judicial auxiliary or administrative or technical employee, not for other new entrants into the Judiciary under other forms of contract. Here, the Committee notes that, during the on-site visit, representatives of the judiciary pointed out that that and other programs were not mandatory for all personnel, such as temporary personnel or category 029 personnel.

[539] In that connection, the Committee believes that it would be beneficial for the State under review to take the steps it considers appropriate so that all Judiciary personnel, irrespective of the nature of their engagement, are incorporated in induction, re-induction, and continuous training programs, as appropriate, including those relating to ethics and awareness of corruption risks. The Committee will make a recommendation. (See recommendation 1.4.9 in Section 1.4 of Chapter III of this report.)

[540] Second, the Committee notes that, during the on-site visit, the representatives of the Judiciary pointed out that one of the difficulties they faced had to do with updating the I.T. programs needed for training courses and with training their I.T. personnel. They added that they also needed technical cooperation to validate their training programs and make sure that they are up to international standards. In light of the above, the Committee believes that it would be appropriate for the State under review to consider bolstering the Judiciary by endowing it, within available resources, with the technical, human, and budgetary resources needed for it to fully instruct its personnel and ensure that they have an appropriate grasp of their responsibilities and of the ethical standards governing their activities. The Committee likewise invites the States Party, as well as other cooperation organizations, to help these institutions achieve these goals. The Committee will make recommendations. (See recommendations 1.4.10 of Section 1.4 of Chapter III of this report.)

1.3. Results of the legal framework and/or other measures

[541] First, with respect to the National Civil Service Office (ONSEC) and its personnel, the Committee notes that, during the on-site visit, ONSEC representatives pointed out that they had no information on the outcomes of applying the provisions and/or measures related to instructing personnel so as to ensure that they have an adequate grasp of their responsibilities and of the ethical standards governing their activities.

[542] That being so, the Committee believes that it would be useful for the State under review to consider compiling statistics on all the public-sector entities showing, disaggregated by date, data on the holding of induction, re-induction, training, and instruction courses to ensure proper understanding of the ethical rules that guide the activities of their personnel, the periodicity or frequency with which those courses are imparted, the number of civil servants taking part, the use of technological tools for those purposes, and the activities carried out to determine whether the objective of ensuring that those ethical rules are understood has been met. (See recommendation 1.4.11 in Section 1.4 of Chapter III of this report.)

[543] Second, during the on-site visit, the representatives of the legislative branch presented the following results obtained in the application of the provisions and/or measures relating to instruction given to government personnel at the public-sector entities selected in order to ensure proper understanding of their responsibilities and the ethical rules governing their activities.
"250 Congressional workers were awarded the "Transformation is in Me" certificate.

300 Congressional workers were awarded Public Administration certificates.

1,400 category 011 and 022 congressional workers were trained in Transparency and Anti-Corruption."

The Committee considers that the above information is pertinent for demonstrating that the legislative branch obtained results in the application of provisions and/or measures relating to instruction given to government personnel to ensure proper understanding of their responsibilities and functions. That notwithstanding, the Committee believes that it would be useful for the State under review to consider supplementing legislative branch statistics with data showing, disaggregated by date, the holding of induction, re-induction, training, and instruction courses to ensure proper understanding of the ethical rules that guide the activities of their personnel, the periodicity or frequency with which those courses are imparted, the number of civil servants taking part, the use of technological tools for those purposes, and the activities carried out to determine whether the objective of ensuring that those ethical rules are understood has been met. (See recommendation 1.4.12 in Section 1.4 of Chapter III of this report.)

As for Judiciary personnel, during the on-site visit, the representatives of the Judiciary presented information they deemed relevant to the subject of the outcomes of the performance evaluations for Judiciary personnel. However, the Committee notes that they did not provide information regarding the results of applying the provisions and/or measures related to courses for Judiciary personnel to ensure that they have an adequate grasp of their responsibilities and of the ethical standards governing their activities.

That being so, the Committee believes that it would be useful for the State under review to consider compiling Judicial Branch statistics with data showing, disaggregated by date, the holding of induction, re-induction, training, and instruction courses to ensure proper understanding of the ethical rules that guide the activities of their personnel, the periodicity or frequency with which those courses are imparted, the number of civil servants taking part, the use of technological tools for those purposes, and the activities carried out to determine whether the objective of ensuring that those ethical rules are understood has been met. (See recommendation 1.4.13 in Section 1.4 of Chapter III of this report.)

Finally, the Committee considers that it would be beneficial for the State under review to consider if the selected and other public-sector entities have handbooks, guidelines, and other instruments for civil servants on the proper discharge of their functions, to alert them to the inherent corruption risks in the performance of their duties, and inform them about the scope and interpretation of the ethical rules that govern their activities and the consequences of their infringement for the civil service and wrongdoers. (See recommendation 1.4.14 in Section 1.4 of Chapter III of this report.)

**1.4. Recommendations**

In light of the comments made in Sections 1.2 and 1.3 of Chapter III of this report, the Committee suggests that the State under review consider the following recommendations:

1.4.1. Take the steps it considers appropriate so that all public administration personnel, irrespective of the nature of their engagement, are incorporated in induction, re-induction, and continuous training programs, as appropriate, including those relating to ethics and awareness of corruption risks. (See paragraphs 523 to 525 in Section 1.2 of Chapter III of this report.)
1.4.2. Develop a policy of induction and ongoing training regarding the duties of public servants and the ethical standards governing the activities of public administration personnel in the institutions within the remit of ONSEC, and adopt such measures as are needed to ensure that said policy is fully implemented in all of them. (See paragraphs 526 to 527 in Section 1.2 of Chapter III of this report.)

1.4.3. Endow ONSEC, within available resources, with the human and budgetary resources required for it to be in a position to fully perform its function as the governing body for institutions in public administration with respect to all matters relating to induction, training, and the professional advancement of public servants. (See paragraph 528 in Section 1.2 of Chapter III of this report.)

1.4.4. Consider adopting a code of ethics or specific behavior manual for personnel in the legislative branch and, then, implementing training programs specifically geared to compliance with that code of ethics or handbook and appointing authorities responsible for their implementation and for training programs on the subject. (See paragraph 529 in Section 1.2 of Chapter III of this report.)

1.4.5. Take the steps it considers appropriate so that all legislative branch personnel, irrespective of the nature of their engagement, are incorporated in induction, re-induction, and continuous training programs, as appropriate, including those relating to ethics and awareness of corruption risks. (See paragraphs 530 to 531 in Section 1.2 of Chapter III of this report.)

1.4.6. Create a body responsible for defining, steering, advising on or supporting the manner in which legislative branch personnel are informed of the ethical standards governing their activities and for overseeing full compliance with those tasks, as well as for measures or actions it can take to ensure compliance with the provisions and/or measures governing this matter; or else attach such a body to an already existing entity, while ensuring that, within available resources, it has the human and budgetary resources needed to fully comply with that function. (See paragraphs 532 to 533 in Section 1.2 of Chapter III of this report.)

1.4.7. Strengthen the legislative branch by providing it with the budgetary and technological resources, and installations, it needs to fully meet its responsibility to instruct its personnel and provide them with an adequate grasp of their responsibilities and of the ethical standards governing their activities. (See paragraphs 534 to 535 in Section 1.2 of Chapter III of this report.)

1.4.8. Analyze the job profiles of legislative branch personnel, as needed, in order to better assess their training needs. (See paragraphs 536 to 537 in Section 1.2 of Chapter III of this report.)

1.4.9. Take the steps it considers appropriate so that all judiciary personnel, irrespective of the nature of their engagement, are incorporated in induction, re-induction, and continuous training programs, as appropriate, including on ethics and awareness of corruption risks. (See paragraphs 538 to 539 in Section 1.2 of Chapter III of this report.)

1.4.10. Bolster the Judiciary by endowing it, within available resources, with the technical, human, and budgetary resources needed for it to fully instruct its personnel and ensure that they have an appropriate grasp of their responsibilities and of the ethical standards governing their activities. (See paragraph 540 in Section 1.2 of Chapter III of this report.)
1.4.11. Compile statistics on all the public-sector entities, showing, disaggregated by date, data on the holding of induction, re-induction, training, and instruction courses to ensure proper understanding of the ethical rules that guide the activities of their personnel, the periodicity or frequency with which those courses are imparted, the number of civil servants taking part, the use of technological tools for those purposes, and the activities carried out to determine whether the objective of ensuring that those ethical rules are understood has been met. (See paragraphs 541 to 542 in Section 1.3 of Chapter III of this report.)

1.4.12. Supplement legislative branch statistics with data showing, disaggregated by date, the holding of induction, re-induction, training, and instruction courses to ensure proper understanding of the ethical rules that guide the activities of their personnel, the periodicity or frequency with which those courses are imparted, the number of civil servants taking part, the use of technological tools for those purposes, and the activities carried out to determine whether the objective of ensuring that those ethical rules are understood has been met. (See paragraphs 543 to 547 in Section 1.3 of Chapter III of this report.)

1.4.13. Compile statistical information on the Judiciary, with data showing, disaggregated by date, the holding of induction, re-induction, training, and instruction courses to ensure proper understanding of the ethical rules that guide the activities of their personnel, the periodicity or frequency with which those courses are imparted, the number of civil servants taking part, the use of technological tools for those purposes, and the activities carried out to determine whether the objective of ensuring that those ethical rules are understood has been met. (See paragraphs 548 to 549 in Section 1.3 of Chapter III of this report.)

1.4.14. Prepare, in the case of institutions that are without them, handbooks, guidelines, and other instruments for civil servants on the proper discharge of their functions, the inherent corruption risks in the performance of their duties, and the scope and interpretation of the ethical rules that govern their activities and the consequences of their infringement for the civil service and for wrongdoers. (See paragraph 550 in Section 1.3 of Chapter III of this report.)

2. STUDY OF PREVENTIVE MEASURES THAT TAKE INTO ACCOUNT THE RELATIONSHIP BETWEEN EQUITABLE COMPENSATION AND PROBITY IN PUBLIC SERVICE (ARTICLE 11, PARAGRAPH 12 OF THE CONVENTION)

2.1. STUDY OF PREVENTIVE MEASURES THAT TAKE INTO ACCOUNT THE RELATIONSHIP BETWEEN EQUITABLE COMPENSATION AND PROBITY IN PUBLIC SERVICE

[552] In its reply to the questionnaire, the State under review pointed out that “Equitable remunerations based on inflation have been hammered out in a series of negotiations, such as those held in the Judiciary with its workers’ trade union. New entrants into the service and those being promoted are advised of the probity procedure (trámite de probidad) they must apply in order to promote a culture of transparency.”

2.2. ESTABLISHMENT OF OBJECTIVE AND TRANSPARENT GUIDELINES FOR DETERMINING CIVIL SERVANT REMUNERATIONS

2.2.1. Existence of provisions in the legal framework and/or other measures.

140 Response of Guatemala to the questionnaire for the Fifth Round, p. 12.
The Republic of Guatemala has a number of provisions for determining civil servant remunerations, in particular:

– The Constitution of the Republic, Article 102 (c) of which establishes that: “Minimal social rights backed by labor legislation and the activity of courts and authorities: c) Equal wages for equal work performed under equal conditions, efficiency, and seniority;”

– The Civil Service Law, Article 71 of which calls for the establishment of a Wage Scale prepared by the National Office of the Civil Service (ONSEC) in consultation with the Ministry of Public Finance. It also establishes that, when determining wages, account must be taken of the requirements of the position concerned, as set forth in the Post Classification Plan.

– The Public Administration Wages and Salaries Law, Congressional Decree 11-73 of February 15, 1973, Article 5 of which provides for the establishment of a wage scale based on such criteria as the cost of living, conditions relating to classification of the post, wage administration in the public sector, and government finances/liquidity. Article 10 calls for an Annual Plan for applying the wage scale.

– The Civil Service Law of the Legislative Branch, Article 18 of which provides that: “Workers are entitled “To receive the corresponding equitable wage, as provided for in the present Law, its enabling regulations, and the corresponding manuals.”

– Enabling regulations of the Legislative Civil Service System Law.

– Government Procurement Law (Category 029, contracts for the provision of services)

– Probity Law or the Office of the Comptroller General of Accounts.

2.2.2. Adequacy of the legal framework and/or other measures

With respect to the provisions on the establishment of objective and transparent guidelines for determining civil servant remunerations, the Committee considers it pertinent, on the basis of the information available to it, to offer the following observations:

First, the Committee notes that during the on-site visit ONSEC representatives pointed to the dispersed nature of regulations governing public servants’ remunerations and that other sections of public administration, such as the police, the diplomatic service, the municipalities, decentralized entities, and others have their own remuneration schemes. They added that personnel covered by collective covenants have different wage scales and that, although those covenants were originally intended to make remuneration more equitable, in practice they had had the opposite effect, given, inter alia, that under-budgeted institutions are at disadvantage vis-à-vis those that are adequately funded, leading to disparities in wages for the same or similar work, depending on the institution.

The Committee further points out that Article 71 of the Civil Service Law, which provides for a wage scale to be prepared by ONSEC in consultation with the Ministry of Finance only takes into consideration the requirements of the positions established in the Post Classification Plan. Here, it should be pointed out that the Post Classification Plan only covers permanent function (Category 011) positions and that although NSEC representatives stated that in practice the services of temporary personnel and

141 See the PowerPoint presentation by the Legislative Branch http://www.oas.org/es/sla/dlc/mesicic/paises-rondas.html?c=Guatemala&r=5
services contract personnel are used to perform permanent functions, those positions are not contemplated in the aforementioned salary scale.

[564] Along the same lines, Congressional representatives also reported during the on-site visit that the Legislative Branch has its own salary scale for permanent staff and that even though they regard their salary system as more stable that that of the Executive Branch, they are similar with respect to the Congressional personnel governed by collective labor covenants, because they give rise to different remuneration regimes.

[565] On this, the Committee notes that on that occasion the ONSEC representatives said they were conducting studies to establish an average remuneration system, because some huge gaps had emerged. Likewise, the representatives of the Legislative Branch suggested that ideally, rather than a reform of existing legislation, a new law should be passed establishing a wage policy that would guarantee fair wages for all State bodies and agencies.

[566] In light of the above, the Committee believes that it would be appropriate for the State under review to consider adopting legal measures suited to establishing a single wage policy for all, State institutions and agencies, establishing, at a minimum, objective criteria for establishing fair public sector remuneration. The Committee will make a recommendation to that effect. (See recommendation 2.2.3.1 in Section 2.2.3 of Chapter III of this report.)

### 2.2.3. Conclusions and recommendations

[567] On the basis of the analysis conducted in foregoing sections, the Committee suggests that the State under review consider the following recommendations in relation to its implementation of the provisions contained in Article III (12) of the Convention:

2.2.3.1. Consider adopting a single wage policy law for all public sector institutions and agencies that, at a minimum, establishes objective criteria for fair remuneration in the public sector. (See paragraphs 562 to 566 in Section 2.2.2 of Chapter III of this report.)

### III. BEST PRACTICES

[568] In keeping with section VI of the Methodology for follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round and for the review of the provisions of the Convention selected for the Fifth Round, the following describes the best practices identified by the State under review that it has wished to share with the other member countries of the MESICIC in the belief that they could be of benefit to them:

[569] First, in its response, the State under review singles out as a best practice the National Census of Human Resources and Persons rendering their technical and/or professional services in the Executive Branch and its decentralized agencies, which was conducted by ONSEC with a view to determining how many public servants there are in the Executive Branch and its decentralized agencies, how much they cost it and where they are located, the idea being to strengthen the Human Resources Management I.T. System (SIARH) and endow it with an updated database.

[570] In that regard, the State under review points out that the aforementioned best practice was triggered by the lack of an exact figure for how many public servants form part of the Executive Branch and Decentralized Entities, which was an obstacle to devising policies aimed at strengthening the human resources in Guatemalan public administration.

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142 Response of Guatemala to the questionnaire for the fifth round, pp. 74 and 75.
Second, also in its reply, the State under review singled out as a best practice\(^{143}\) the “Children’s Transparency Days” program (Jornadas Infantiles por la Transparencia), run by the Office of the Comptroller General of Accounts.

Regarding the reasons for developing this best practice and why it is so important, the State under review pointed out that Article 1 of the Organic Law of the Office of the Comptroller General of Accounts (Decree 31-2002) establishes “as one of its obligations the duty of promote ethic values and responsibility among government officials and public servants. Likewise, Article 44 of the enabling regulations to this law (Governmental Decision 192-2014) establishes that one of the functions of the institution’s administrative units is to promote and conduct in different segments of Guatemalan society activities aimed at enhancing observance of ethical and moral values, with a view to promoting ethics and morality among future public servants. Accordingly, it was deemed important to establish coordination mechanisms with MINEDUC for implementing the “Children’s Transparency Days” project in primary schools nationwide.

This project seeks to motivate, raise awareness, and trigger reflection on the importance of training children from their formative years to be guided by values, so that when they are grown-up citizens, who might eventually enter public or private office, they act with integrity to the benefit of Guatemalan society.”

\(^{143}\) Idem. pp. 76 to 79.
<table>
<thead>
<tr>
<th>Monday, April 8, 2019</th>
<th>Coordination meeting of the representatives of the member states of the subgroup and the Technical Secretariat</th>
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<tr>
<td>3:00 p.m. – 4:00 p.m.</td>
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<td>Coordination meeting of representatives of the State under review, the member states of the subgroup, and the Technical Secretariat</td>
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<td>4:30 p.m. – 5:00 p.m.</td>
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<tr>
<th>Tuesday, April 9, 2019</th>
<th>Meetings with civil society organizations and/or, <em>inter alia</em>, private sector organizations, professional associations, academics or researchers.</th>
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| 8:30 a.m. – 12:30 p.m. | *Topic 1:*  
  - Systems of government hiring, training, and remuneration                                                                                     |
| 8:30 a.m. – 10:00 a.m. | *Participants:*  
  *Acción Ciudadana Guatemala, National Chapter of Transparency International*  
  Name: Edi Cux  
  Position: Executive Director  
  Name: Marvín Flores y Flores  
  Position: Project Coordinator  
  Name: Lilian Sierra  
  Position: Project Coordinator  
  Name: Crhis Kowalesky  
  Position: Project Coordinator  
  *Guatemala Visible*  
  Name: Mynor Lorenzo  
  Position: Representative, Guatemala Visible  
  *CEIDEPAZ*  
  Name: Sergio Funes  
  Position: Director General  
  *Guatecívica* |
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| 10:00 a.m. – 11:15 a.m. | **Topic 2:**  
- Systems for government procurement of goods and services | Name: Rafael Poitevín  
Position: Director General  

**Participants:**  
- Acción Ciudadana Guatemala, National Chapter of Transparency International  
  Name: Edi Cux  
  Position: Director General  
- Nombre: Marvín Flores y Flores  
  Position: Project Coordinator  
- Nombre: Guadalupe García Prado  
  Position: Project Coordinator  

- Fundación para el Desarrollo de Guatemala (FUNDESA)  
  Name: Carmen Lucía Salguero  
  Position: Coordinator of the Solidarity Section of Mejoremos Guate  

- Centro Internacional de Investigaciones en Derechos Humanos (CIIDH)  
  Name: Carlos Fernández  
  Position: Director General |
| 11:15 a.m. – 12:30 p.m. | **Topic 3:**  
- Protection systems for those who report acts of corruption  
- Legal characterization of acts of corruption | **Participants:**  
- Acción Ciudadana Guatemala, National Chapter of Transparency International  
  Name: Edi Cux  
  Position: Director General |
| 12:30 p.m. – 2:00 p.m. | **Lunch** |  

**Hotel Clarion Suites** |
| 2:00 p.m. – 5:30 p.m. | **Meetings with public authorities** |  

**Hotel Clarion Suites** |
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<tr>
<td>2:00 p.m. – 3:45 p.m.</td>
<td><strong>Panel 1:</strong></td>
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<td>• <strong>Follow-up on recommendations from the second round regarding government hiring systems:</strong></td>
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<td><strong>Executive Branch</strong></td>
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<td>- Progress and new developments</td>
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<td>- Difficulties encountered during implementation and technical cooperation needs</td>
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<td><strong>Participants:</strong></td>
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|  | - **National Civil Service Office (ONSEC)**  
  Name: Executive Director  
  Position: Executive Director |
|  | - **Dirección de Carrera Administrativa (Administrative Career Directorate)**  
  Name: Julia Orellana  
  Position: Administrative Career Director |
|  | - **Junta Nacional de Servicio Civil (National Civil Service Board)**  
  **Name: Víctor Gómez**  
  Secretary of the National Civil Service Board |
|  | - **Ministry of Public Finance**  
  Name: Silvia Márquez  
  Position: Advisor to the Ministry of Public Finance  
  Name: José Antonio Menéndez  
  Position: Advisor to the Ministry of Public Finance  
  Name: María Soledad Muñoz  
  Position: Director of Human Resources |
| 3:45 p.m. – 4:00 p.m. | **Break** |
| 4:00 p.m. – 5:30 p.m. | **Panel 1 (cont.)** |
|  | • **Follow-up on recommendations from the second round regarding government hiring systems:** |
|  | **Legislative Branch** |
|  | - Progress and new developments |
|  | - Difficulties encountered during implementation and technical cooperation needs |
|  | - Results |
### Municipalities
- Progress and new developments
- Difficulties encountered during implementation and technical cooperation needs
- Results

#### Participants:
- **Human Resources Directorate of the Congress of the Republic**
  - Name: Jennifer Manso
  - Position: Director of Human Resources
- Name: Patricia Letona
  - Access to Public Information
- Name: Tatiana Juárez
  - Access to Public Information

#### Wednesday, April 10, 2019

#### Meetings with public authorities

#### Panel 1 (cont.)
- **Follow-up on recommendations from the second round regarding government hiring systems:**
  
  **Ministerio Público (Office of the Attorney General)**
  - Progress and new developments
  - Difficulties encountered during implementation and technical cooperation needs
  - Results

  **Judiciary**
  - Progress and new developments

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144. The second paragraph of provision 20 of the Methodology for Conducting On-Site Visits states: “...At the conclusion of the meetings on each day of the on-site visit, the Technical Secretariat shall organize an informal meeting with the members of the Subgroup, to exchange preliminary points of view on the topics addressed at those meetings...”
<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
</tr>
</thead>
</table>
| 11:00 AM a.m. | Difficulties encountered during implementation and technical cooperation needs  
|               | Results                                                                 |
|               | **Participants**                                                                 |
|               | - **Office of the Attorney General**                                      |
|               |   Name: Karla Briones  
|               |   Position: Head of the Personnel Department  
|               |   Name: María José Aguilar  
|               |   Position: Legal Advisor                                                        |
|               | - **Office of the Manager of Human Resources of the Judiciary**             |
|               |   Name: Guilder Ramiro Godínez Navarro  
|               |   Position: Human Resources Manager in the Judiciary  
|               |   Name: Jaime Enrique Sandoval Villacorta  
|               |   Position: Advisor to the Secretariat for Strengthening the Judiciary and Cooperation |
| 11:00 AM a.m. | **Panel 2:**  
|               |   - Follow-up to Recommendations from the Second Round:  
|               |     Legal characterization of acts of corruption  
|               |     - Progress and new developments  
|               |     - Difficulties encountered during implementation and technical cooperation needs  
|               |     - Results  
|               | **Participants:**                                                                 |
|               | - **Office of the Attorney General**                                      |
|               |   Name: Pedro Fuentes  
|               |   Position: Advisor on Criminal Policy to the Criminal Policy Secretariat  
|               | - **Judiciary**                                                            |
|               |   Name: Nydia Corzantes Arévalo  
|               |   Position: Coordinator of the Disciplinary Rules Unit  
|               |   - Name: Gabriel Estuardo García Luna  
|               |   Position: Chair of the Judicial Discipline Board  
|               |   - Name: Erick Eduardo Shaffer Cabrera  
|               |   Position: Advisor to the Secretariat for Strengthening the Judiciary and Cooperation |
| 12:00 p.m. – 2:00 p.m. | **Lunch**  

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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</thead>
<tbody>
<tr>
<td>2:00 p.m. – 5:00 p.m.</td>
<td><strong>Meetings with public authorities</strong></td>
</tr>
<tr>
<td><strong>Hotel Clarion Suites Marfil Room</strong></td>
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<tr>
<td></td>
<td><strong>- Prevention measures that give due consideration to the relationship between equitable remuneration and probity in public service</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Participants:</strong></td>
</tr>
<tr>
<td></td>
<td><strong>- National Civil Service Office (ONSEC)</strong></td>
</tr>
<tr>
<td></td>
<td>Name: Sergio Fernando Méndez Córdova</td>
</tr>
<tr>
<td></td>
<td>Position: Director of Posts and Remuneration</td>
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<tr>
<td></td>
<td><strong>- Legislative Branch</strong></td>
</tr>
<tr>
<td></td>
<td>Name: Nancy García</td>
</tr>
<tr>
<td></td>
<td>Position: Professional in the Post Classification and Wages Unit</td>
</tr>
<tr>
<td></td>
<td>Name: Jennifer Manso</td>
</tr>
<tr>
<td></td>
<td>Position: Director of Human Resources</td>
</tr>
<tr>
<td>4:00 p.m. – 5:30 p.m.</td>
<td><strong>Panel 4:</strong></td>
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<tr>
<td></td>
<td><strong>- Follow-up to Recommendations from the Second Round:</strong></td>
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<tr>
<td></td>
<td><strong>Protection systems for those who report acts of corruption</strong></td>
</tr>
<tr>
<td></td>
<td><strong>- Progress and new developments</strong></td>
</tr>
<tr>
<td></td>
<td><strong>- Difficulties encountered during implementation and technical cooperation needs</strong></td>
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<tr>
<td></td>
<td><strong>- Results</strong></td>
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<tr>
<td></td>
<td><strong>Suggested Participants:</strong></td>
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<tr>
<td></td>
<td><strong>- Office of the Attorney General</strong></td>
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<tr>
<td></td>
<td>Name: Adelmo Bámaca Jerónimo</td>
</tr>
<tr>
<td></td>
<td>Position: Deputy Director in the Protection Office</td>
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<tr>
<td></td>
<td><strong>- Disciplinary Rules Unit and Judicial Discipline Board</strong></td>
</tr>
<tr>
<td></td>
<td>Name: Nydia Marfa Corzantes Arévalo</td>
</tr>
<tr>
<td></td>
<td>Position: Coordinator of the Disciplinary Rules Unit</td>
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<tr>
<td></td>
<td>Name: Gabriel Estuardo García Luna</td>
</tr>
<tr>
<td></td>
<td>Position: Chair of the Judicial Discipline Board</td>
</tr>
<tr>
<td></td>
<td>Name: Gilberto Javier Barreda Barrientos</td>
</tr>
<tr>
<td></td>
<td>Position: Advisor to the Secretariat for Strengthening the Judiciary and Cooperation</td>
</tr>
</tbody>
</table>
Informal meeting with representatives of the member states of the subgroup and the Technical Secretariat.

**Thursday, April 21, 2016**

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
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</thead>
<tbody>
<tr>
<td>9:00 a.m. – 12 noon.</td>
<td>Meetings with public authorities</td>
</tr>
<tr>
<td>Hotel Clarion Suites Marfil Room</td>
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<tr>
<td>9:00 a.m. – 12:00 PM a.m.</td>
<td><strong>Panel 5:</strong></td>
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<tr>
<td></td>
<td>- Instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities</td>
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<td></td>
<td>- Legal framework, programs, competent bodies, and technology use</td>
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<tr>
<td></td>
<td>- Problems encountered and technical cooperation needs</td>
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<tr>
<td></td>
<td>- Results.</td>
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<tr>
<td>Suggested Participants:</td>
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<tr>
<td></td>
<td>- National Civil Service Office (ONSEC)</td>
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<td></td>
<td>Name</td>
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<td></td>
<td>Position</td>
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<td></td>
<td>- Judiciary</td>
</tr>
<tr>
<td></td>
<td>Name: Guilder Ramiro Godínez Navarro</td>
</tr>
<tr>
<td></td>
<td>Position: Manager, Human Resources</td>
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<tr>
<td></td>
<td>- Sergio Darío Chávez Pérez</td>
</tr>
<tr>
<td></td>
<td>Coordinator of the Integral Development Unit</td>
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<tr>
<td></td>
<td>- Gilberto Javier Barreda Barrientos</td>
</tr>
<tr>
<td></td>
<td>- Position: Advisor to the Secretariat for Strengthening the Judiciary and Cooperation</td>
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<td></td>
<td>- Legislative Branch</td>
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<td></td>
<td>Name:</td>
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<tr>
<td></td>
<td>Position</td>
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<tr>
<td>12:00 p.m. – 1:30 p.m.</td>
<td>Lunch</td>
</tr>
<tr>
<td>1:30 PM a.m. – 4:30 PM a.m.</td>
<td>Meetings with public authorities</td>
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145. The second paragraph of provision 20 of the Methodology for Conducting On-Site Visits states: “...At the conclusion of the meetings on each day of the on-site visit, the Technical Secretariat shall organize an informal meeting with the members of the Subgroup, to exchange preliminary points of view on the topics addressed at those meetings...”
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<tr>
<td><strong>Panel 6:</strong></td>
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<tr>
<td>• Follow-up to Recommendations from the Second Round: Systems for government procurement of goods and services</td>
</tr>
<tr>
<td>- Progress, and new developments in implementing the recommendations pending</td>
</tr>
<tr>
<td>- Difficulties encountered during implementation and technical cooperation needs</td>
</tr>
<tr>
<td>- Results</td>
</tr>
<tr>
<td><strong>Participants:</strong></td>
</tr>
<tr>
<td>- <strong>General Registry of Government Procurement of the Ministry of Finance</strong></td>
</tr>
<tr>
<td>Name: Gabriela Hernández</td>
</tr>
<tr>
<td>Position: Director-General of Government Procurement</td>
</tr>
<tr>
<td>- <strong>Department of Procurement of Goods and Services of the Judiciary</strong></td>
</tr>
<tr>
<td>Name: Herberth Leonardo Sarceño Pacheco</td>
</tr>
<tr>
<td>Position: Coordinator of the Department of Goods, Procurement, and Services</td>
</tr>
<tr>
<td>Name: Jaime Enrique Sandoval Villacorta</td>
</tr>
<tr>
<td>Position: Advisor to the Secretariat for Strengthening the Judiciary and Cooperation</td>
</tr>
</tbody>
</table>

| 4:30 p.m. | **Informal meeting** with representatives of the member states of the subgroup and the Technical Secretariat. |
| 5:00 p.m. | **Final meeting** with representatives of the State under review, the members states of the subgroup, and the Technical Secretariat. |
OFFICIALS WHO ACTED AS CONTACTS IN THE STATE UNDER REVIEW IN COORDINATING THE ON-SITE VISIT, AS WELL AS REPRESENTATIVES OF THE MEMBER STATES OF THE SUBGROUP AND OF THE MESICIC TECHNICAL SECRETARIAT WHO TOOK PART IN THE VISIT

STATE UNDER REVIEW:

GUATEMALA

Marco Antonio Archila Cabrera
Lead Expert on the Committee of Experts of the MESICIC
Coordinator and Executive Director
Presidential Commission of Open Public Management and Transparency

Jaime Rafael Muñoz Flores
Alternate Expert on the Committee of Experts of the MESICIC
Director of National and International Cooperation
Presidential Commission of Open Public Management and Transparency

MEMBER STATES OF THE PRELIMINARY REVIEW SUBGROUP:

CHILE

Eugenio Rebolledo Suazo
Lead Expert on the Committee of Experts of the MESICIC
Auditor General of the Government
Government General Internal Audit Council (CAIGG)

Lya Cabello Abdala
Alternate Expert on the Committee of Experts of the MESICIC
Prosecutor
Supreme Court of Justice

Loreto Gutiérrez Alvear
Alternate Expert on the Committee of Experts of the MESICIC
Prosecutor
Appellate Court of Santiago

Yelica Lusic Nadal
Alternate Expert on the Committee of Experts of the MESICIC
Attorney
Specialized Anti-Corruption Unit (UNAC)
Office of the Attorney General

Mayra Johana Zambrano
Alternate Expert on the Committee of Experts of the MESICIC
Attorney
Cooperation and International Relations Unit
Office of the Comptroller General (CGR)
HONDURAS

Roy Pineda Castro
Lead Expert on the Committee of Experts of the MESICIC
Magistrate President
Superior Court of Accounts

Jorge Medina
Alternate Expert on the Committee of Experts of the MESICIC
Advisor
Superior Court of Accounts

Melissa Paz
Alternate Expert on the Committee of Experts of the MESICIC
Communications Director
Superior Court of Accounts

TECHNICAL SECRETARIAT OF THE MESICIC

Marta Laura Martínez
Senior Legal Officer
Department of Legal Cooperation
OAS Secretariat for Legal Affairs

Alexsa McKenzie
Legal Consultant
Department of Legal Cooperation
OAS Secretariat for Legal Affairs